

EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION

November 27, 2007

SUBJECT: Third Amendment to the Consultant Agreement for State Route 163 and Friars Road

GENERAL CONTRACT INFORMATION

Recommended Contractor: Dokken Engineering
 Amount of this Action: \$ 761,000
 Original Agreement: \$1,117,900
 Cumulative Amount: \$2,428,900
 Funding Source: City of San Diego

SUBCONSULTANT PARTICIPATION

	<u>This Action</u>		<u>Cumulative</u>	
Affinis (Other)	\$ 0	0%	\$ 71,478.18	4.29%
Aguirre & Associates (Hispanic Male/DBE)	\$ 0	0%	\$ 14,212.68	0.85%
CIC Research (Asian Male/DBE)	\$ 0	0%	\$ 31,989.00	1.92%
Estrada Land Planning (Hispanic Male/DBE)	\$ 24,000	3.15%	\$ 69,780.00	2.87%
Helix Environmental Planning (Other)	\$344,582	45.28%	\$794,579.00	32.71%
Linscott, Law & Greenspan (Other)	\$ 27,300	3.58%	\$193,145.00	7.95%
Pacific Noise Control (Other)	\$ 0	0%	\$ 26,198.00	1.57%
Scientific Resources Associated (Caucasian Female/DBE)	\$ 0	0%	\$ 18,840.00	1.13%
TY Lin International (Other)	\$ 10,000	1.31%	\$ 89,457.00	3.68%
Value Management Strategies (Other)	\$ 0	0%	\$ 20,911.35	1.25%
Total Certified Participation	\$ 24,000	3.15%	\$134,821.68	5.55%
Total Subconsultant Participation	\$405,882	53.33%	\$1,330,590.21	54.78%

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity Required.

Dokken Engineering submitted a Work Force Report dated September 14, 2007 indicating thirty-nine employees in San Diego. Under representations exist in the following categories:

Black in Technical
 Hispanic in Technical and Administrative Support
 Asian and Filipino in Technical
 Female in A&E/Science/Computer and Technical

Staff will continue to monitor their equal employment performance.

ADDITIONAL COMMENTS

The *Work Force Analysis* is attached.

RLL

File: Admin WOFO 2000

Date WOFO Submitted: 9/14/2007
Input by: vanGoals reflect statistical labor force
availability for the following: 2000 CLFA
San Diego, CA

City of San Diego/Equal Opportunity Contracting

WORK FORCE ANALYSIS REPORT

FOR

Company: Dokken Engineering

Project:

I. TOTAL WORK FORCE:

	Black			Hispanic			Asian			American Indian			Filipino			White			Other		
	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	M	F	M	F		
Mgmt & Financial	3.3%	0	0	11.9%	0	0	6.2%	0	0	0.4%	0	0	6.2%	0	0	1	0	0	0		
Professional	4.0%	0	0	12.6%	0	0	6.5%	0	0	0.5%	0	0	6.5%	0	0	0	0	0	0		
A&E, Science, Computer	2.6%	0	0	7.3%	0	0	16.2%	2	0	0.3%	0	0	16.2%	1	0	4	0	0	0		
Technical	6.6%	0	0	14.8%	2	0	17.2%	1	2	0.4%	0	0	17.2%	0	0	16	5	0	0		
Sales	3.9%	0	0	19.5%	0	0	18.8%	0	0	0.6%	0	0	6.8%	0	0	0	0	0	0		
Administrative Support	7.0%	0	1	20.8%	0	0	8.8%	0	0	0.6%	0	0	8.8%	0	0	1	3	0	0		
Services	5.5%	0	0	36.9%	0	0	9.7%	0	0	0.6%	0	0	9.7%	0	0	0	0	0	0		
Crafts	4.5%	0	0	25.8%	0	0	9.1%	0	0	0.7%	0	0	9.1%	0	0	0	0	0	0		
Operative Workers	4.3%	0	0	38.6%	0	0	20.8%	0	0	0.3%	0	0	20.8%	0	0	0	0	0	0		
Transportation	8.1%	0	0	32.1%	0	0	4.5%	0	0	0.5%	0	0	4.5%	0	0	0	0	0	0		
Laborers	4.4%	0	0	54.0%	0	0	4.1%	0	0	0.5%	0	0	4.1%	0	0	0	0	0	0		
TOTAL		0	1		2	0		3	2		0	0		1	0		22	8		0	0

HOW TO READ TOTAL WORK FORCE SECTION:

The information blocks in Section 1 (Total Work Force) identify the absolute number of the firm's employees. Each employee is listed in their respective ethnic/gender and employment category. The percentages listed under the heading of "CLFA Goals" are the County Labor Force Availability goals for each employment and ethnic/gender category.

Mgmt & Financial
Professional
A&E, Science, Computer
Technical
Sales
Administrative Support
Services
Crafts
Operative Workers
Transportation
Laborers

TOTAL EMPLOYEES			Female Goals
ALL	M	F	
1	1	0	39.8%
0	0	0	59.5%
7	7	0	22.3%
26	19	7	49.0%
0	0	0	49.4%
5	1	4	73.2%
0	0	0	62.3%
0	0	0	8.6%
0	0	0	36.7%
0	0	0	15.2%
0	0	0	11.1%
TOTAL	39	28	11

HOW TO READ EMPLOYMENT ANALYSIS SECTION:

The percentages listed in the goals column are calculated by multiplying the CLFA goals by the number of employees in that job category. The number in that column represents the percentage of each protected group that should be employed by the firm to meet the CLFA goal. A negative number will be shown in the discrepancy column for each underrepresented goal of at least 1.00 position.

II. EMPLOYMENT ANALYSIS

	Black			Hispanic			Asian			American Indian			Filipino			Female		
	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy
Mgmt & Financial	0.03	0	N/A	0.12	0	N/A	0.06	0	N/A	0.00	0	N/A	0.06	0	N/A	0.40	0	N/A
Professional	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
A&E, Science, Computer	0.20	0	N/A	0.51	0	N/A	1.13	2	N/A	0.02	0	N/A	1.13	1	N/A	1.56	0	(1.56)
Technical	1.72	0	(1.72)	3.85	2	(1.85)	4.47	3	(1.47)	0.10	0	N/A	4.47	0	(4.47)	12.74	7	(5.74)
Sales	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Administrative Support	0.35	1	N/A	1.04	0	(1.04)	0.44	0	N/A	0.03	0	N/A	0.44	0	N/A	3.66	4	N/A
Services	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Crafts	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Operative Workers	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Transportation	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Laborers	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00

Goals are set by job categories for each protected group. An underrepresentation is indicated by a negative number, but if the DISCREPANCY is less than -1.00 position, a N/A will be displayed to show there is no underrepresentation.

Friars Road/SR-163 Interchange Project Subconsultant Participation

Request for Master Amendment #3

Dokken Engineering	\$355,118	47%
Helix Environmental	\$344,582	45%
LLG Engineers	\$27,300	4%
Estrada Land Planning	\$24,000	3%
TY-Lin	\$10,000	1%
	\$761,000	100%

Cumulative (Original + Amendment 1, 2, and 3)

Dokken Engineering	\$1,095,154	45%
Helix Environmental	\$794,579	33%
LLG Engineers	\$193,145	8%
Estrada Land Planning	\$69,780	3%
TY-Lin	\$89,457	4%
SCST	\$145,185	6%
VMS	\$20,900	1%
Aguirre & Associates	\$20,700	1%
	\$2,428,900	100%

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REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

 1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE ONLY)
2800464

CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT):

ENGINEERING & CAPITAL PROJECTS

3. DATE:

October 23, 2007

4. SUBJECT:

State Route 163 and Friars Road – Appropriation of Funds and Third Amendment to Agreement

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.)

Marnell Gibson, 533-5213, MS 908A

6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.)

Ruth Shackelford, 533-3781, MS 612

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED



8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	RR	63022	RR	63022	30244	9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPT.					30244	Transfer of Funds: \$300,000
ORGANIZATION					107	Agreement: \$1,117,900
OBJECT ACCOUNT					4279	First Amendment \$400,000
JOB ORDER		179309		990348	119440	Second Amendment \$150,000
C.I.P. NUMBER		99-999.9		99-034.8	52-450	This Request: \$761,000
AMOUNT		\$145,000		\$155,000	\$761,000	Total: \$2,428,900

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	<i>[Signature]</i>	11/8/07	8	DEPUTY CHIEF	<i>[Signature]</i>	12/17/07
2	FACILITIES FINANCING	<i>[Signature]</i>	11/13/07	9	COO	<i>[Signature]</i>	12-20-07
3	EAS	<i>[Signature]</i>	11/14/07	10	CITY ATTORNEY	<i>[Signature]</i>	12/7/08
4	EOCP	<i>[Signature]</i>	11-29-7	11	ORIG. DEPT	<i>[Signature]</i>	1-11-08
5	LIAISON OFFICE	<i>[Signature]</i>	12/4/07		DOCKET COORD:	<i>[Signature]</i>	COUNCIL LIAISON <i>[Signature]</i>
6	CIP/FM	<i>[Signature]</i>	12/10/07		COUNCIL PRESIDENT	<input type="checkbox"/> SPOB <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION	
7	AUDITOR	<i>[Signature]</i>	12/18/07		<input type="checkbox"/> REFER TO:	COUNCIL DATE: 1/27/08	

11. PREPARATION OF:

☒ RESOLUTIONS☒ ORDINANCE(S)☐ AGREEMENT(S)☐ DEED(S)

1. Authorizing the Appropriation of \$145,000 from Job Order 179309, State Route 163 and Friars Road Interchange, Fund 63022, Private and Other Contributions into CIP 52-455.0, State Route 163 and Friars Road; and

(Continued)

11A. STAFF RECOMMENDATIONS: Adopt the Ordinance

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): 6 (Donna Frye)

COMMUNITY AREA(S): Mission Valley

ENVIRONMENTAL IMPACT: This activity (appropriation and expenditure of funds for design and executing an amendment to the agreement with Dekken Engineering for the design of State Route 163 and Friars Rd.) is not a "project" and is therefore not subject to CEQA pursuant to State CEQA Guidelines §15060(c)(3). This determination is predicated on Section 15004 of the Guidelines, which provides direction to lead agencies on the appropriate timing for environmental review. Construction activities related to this action will be subject to review under the provisions of CEQA and NEPA.

HOUSING IMPACT: None with this action

OTHER ISSUES: Attachments: Original Agreement, First Amendment, Second Amendment, proposed Third Amendment, Location Map, Item is subject to Charter Section 99.

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2. Authorizing the Appropriation of \$155,000 from Job Order 990348, Miscellaneous Transportation Improvements, Fund 63022, Private and Other Contributions into CIP 52-455.0, State Route 163 and Friars Road; and
3. Authorizing an increase the Fiscal Year 2008 Capital Improvements Program Budget by appropriating and expending \$300,000 from Fund 63022, Private and Other Contributions, CIP 52-455.0, State Route 163 and Friars Road; and
4. Authorizing the Mayor or his designee to execute a Third Amendment to the agreement with Dokken Engineering for professional engineering services for CIP 52-455.0, State Route 163 and Friars Road; and
5. Authorizing the expenditure of \$761,000 of which \$300,000 is from Fund 63022, Private and Other Contributions and \$461,000 is from Fund 30300, TransNet, for the purpose of executing this Third Amendment to the Agreement; and
6. Authorizing the City Auditor and Comptroller to return excess budgeted funds to the appropriate reserves.

CITY ATTORNEY
01 DEC 21 AM 8:35
CIVIL DIVISION

REPORT TO THE CITY COUNCIL
EXECUTIVE SUMMARY SHEET

DATE REPORT ISSUED: October 23, 2007 REPORT NO.
ATTENTION: Council President and City Council
ORIGINATING DEPT.: Engineering and Capital Projects
SUBJECT: State Route 163 and Friars Road – Appropriation of Funds and
Third Amendment to Agreement
COUNCIL DISTRICTS: 6, Donna Frye
STAFF CONTACT: Marnell Gibson / Kris Shackelford 619-533-5213/533-3781

REQUESTED ACTION: Council authorization for the appropriation and expenditure of funds for Friars Road Project and to execute the Third Amendment to Agreement with Dokken Engineering for this purpose.

STAFF RECOMMENDATION: Approve the Resolutions and Ordinance

EXECUTIVE SUMMARY: The proposed project would provide for the modifications to State Route 163 and Friars Road interchange in order to improve traffic circulation within the interchange area. The design of the project has been divided into two phases. The first phase consists of the preparation of a Caltrans Project Report and Environmental Clearance, which includes mapping development and analysis of preliminary design alternatives, preparation of environmental documents and geotechnical reports, value engineering analysis and preliminary project estimates. The second phase consists of the preparation of construction documents (plans, specifications, and estimates).

On June 3, 2003, per RR-298019, the City Council authorized to enter into a consultant agreement with Dokken Engineering to prepare a Project Report and Environmental Clearance documentation.

On March 14, 2005, per RR-300220, the City Council authorized to enter into the First Amendment to Agreement for the purposes of upgrading the environmental document from a Mitigated Negative Declaration to an Environmental Impact Report and providing the technical studies for the expanded project boundaries.

On September 26, 2006, per RR-301928, the City Council authorized to enter into the Second Amendment to the Agreement for the purposes of providing additional traffic analysis, engineering support, and additional coordination meetings for the Environmental Impact Report and Project Study Report.

The Third Amendment to the Agreement is for additional services due to the following:

- Development Services Department staff reviewed the traffic study and identified additional road improvements that will be needed to accommodate future traffic volumes and prevent queuing on Friars Road. The additional road and signal improvements are along Frazee Road to the North and South of Friars Road and the driveway access to the Cheesecake Factory. These additional areas require base mapping not previously done, revisions to the project graphics, and analysis in the technical reports.

REPORT TO THE CITY COUNCIL
EXECUTIVE SUMMARY SHEET

- Caltrans and City had recently completed its' review of the draft National Environmental Policy Act's (NEPA) and California Environmental Quality Act's (CEQA) document. Typically this is prepared as a joint report, which is how the document was prepared. After the review by Caltrans and City staff, it was determined that the draft EIR document should be written as a separate document. This is anticipated to streamline the approval process. However, it will take a significant design effort to separate and revise the existing draft document.
- Lastly, as part of the review of the draft EIR it was discovered that there were project issues which had not been previously known or addressed at the time the Consultant's scope of work was prepared. This additional work includes in the following revisions to technical studies and/or plans: geotechnical, traffic, utility, cultural and visual impact studies, landscaping plans, updated biological assessment and jurisdictional delineation reports, a water quality technical report and offsite mitigation and wetland restoration plan. In addition, the extra work takes into account that the EIR will be done in separate NEPA/CEQA documents as stated above.

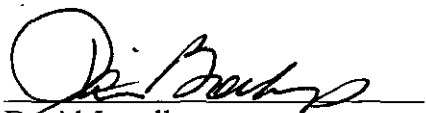
In addition, the "private and other contributions" fund is money from developers which have been collected by City of San Diego to be used for improvements in the Mission Valley area. It was decided to use a portion of the money from this fund to help offset the additional design costs for the project.

FISCAL CONSIDERATIONS: City of San Diego Council previously authorized \$1,667,900 for this project. Funding for the third amendment to the agreement in the amount of \$761,000 is available from CIP 52450, State Route 163 and Friars Road of which \$300,000 is in Fund 63022, Private and Other Contributions and \$461,000 is in Fund 30300, TransNet. With this action the total consultant contract will be increased to \$2,425,900.

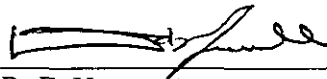
PREVIOUS COUNCIL COMMITTEE ACTION: Consultant Agreement, RR-298019 dated, June 3, 2003; First Amendment, RR-300220 dated, March 14, 2005; Second Amendment, RR-301928 dated, September 26, 2006.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: A public scoping meeting was held on November 28, 2005 to introduce the project and gather public comments as part of the EIR process. Presentations were made to the Mission Valley Unified Planning Group and Linda Vista Community Planning Group to introduce the project and receive feedback. Both community groups are in full support of the project.

KEY STAKEHOLDERS: Mission Valley Unified Planning Group and Linda Vista Community Planning Group City of San Diego, Caltrans, Dokken Engineering, Helix Environmental, LLG Engineers, Estrada Land Planning and TY Lin.



David Jarrell
Director, Engineering and Capital Projects



R. F. Haas
Deputy Chief, Public Works

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The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

CERTIFICATE OF UNALLOTTED BALANCE

AC 2800464

ORIGINATING

DEPT.

NO.: 547

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: \$300,000.00 Fund: 63022

Purpose: To authorize the transfer of funds from donation Job Orders to appropriate CIP for completion of the Friars Rd/ SR163 project.

Date: December 18, 2007

By: 
 Caryn McGriff
 AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA											
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/	EQUIP	FACILITY	AMOUNT
1	0	63022	63022		4279	179309					\$145,000.00
2	0	63022	63022		4279	990348					155,000.00
TOTAL AMOUNT											\$300,000.00

FUND OVERRIDE [

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the money anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$761,000.00

Vendor: Dokken Engineering

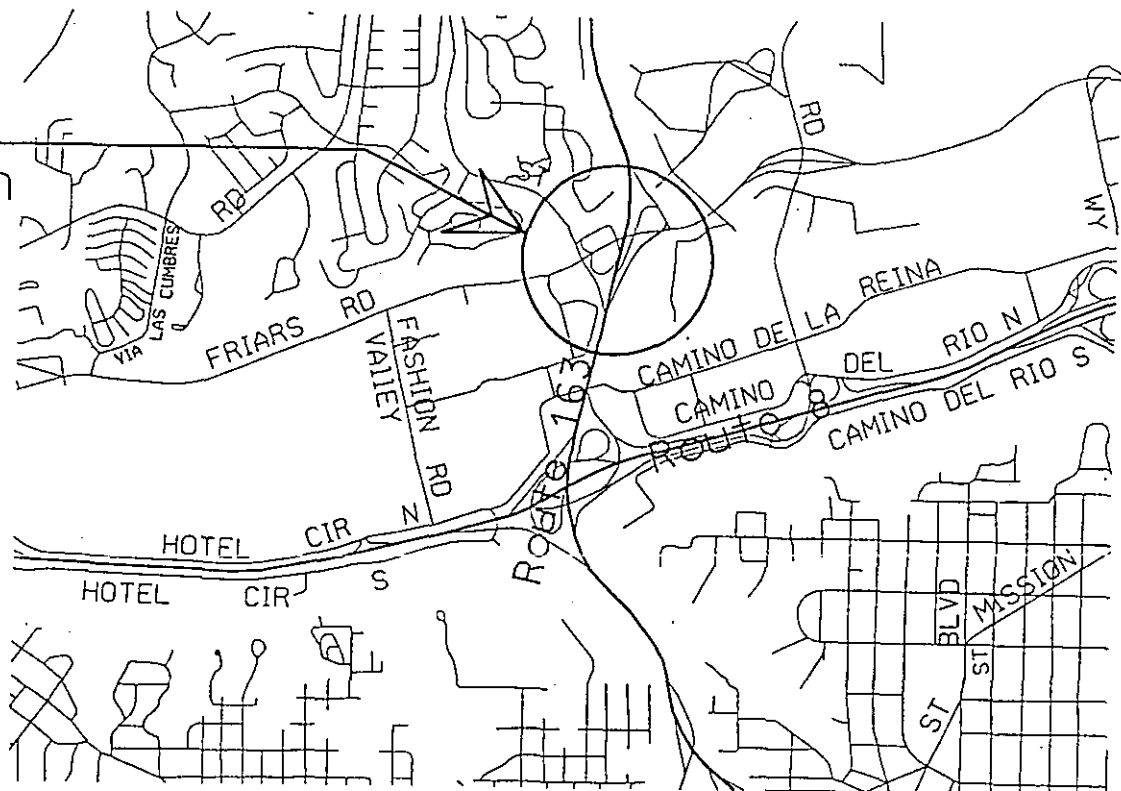
Purpose: To authorize the expenditure of funds for the purpose of executing the third contract amendment for engineering services related to the completion of Sr 163 & Friars Rd.

Date: December 18, 2007

By: 
 Caryn McGriff
 AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/	EQUIP	FACILITY	AMOUNT
3	0	30244	30244	107	4279	524550					\$761,000.00
TOTAL AMOUNT											\$761,000.00

Project
Location



Not to Scale



LOCATION MAP

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE APPROPRIATION OF FUNDS; AUTHORIZING THE EXECUTION OF THIRD AMENDMENT TO THE AGREEMENT FOR THE STATE ROUTE 163 AND FRIARS ROAD IN THE MISSION VALLEY PLANNING AREA.

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the appropriation of an amount not to exceed \$145,000 from Job Order 179309, State Route 163 and Friars Road Interchange, to CIP No. 52-455.0, State Route 163 and Friars Road [Project], within Fund No. 63022, Private and Other Contributions, is authorized.

Section 2. That the appropriation of an amount not to exceed \$155,000 from Job Order 990348, Miscellaneous Transportation Improvements, to CIP No. 52-4550.0, State Route 163 and Friars Road, within Fund No. 63022, Private and Other Contributions, is authorized.

Section 3. That a \$300,000 increase in the Fiscal Year 2008 Capital Improvements Program Budget in CIP No. 52-455.0, State Route 163 and Friars Road, Fund No. 63022, Private and Other Contributions, is authorized.

Section 4. That the Mayor be and he is hereby authorized and empowered to execute, for and on behalf of said City, an agreement with Dokken Engineering, for professional engineering services for CIP No. 52-455.0, State Route 163 and Friars Road, under the terms and conditions set forth in the Agreement on file in the office of the City Clerk as Document No.

OO-_____.

Section 5. That the expenditure of an amount not to exceed \$761,000 from CIP No. 52-455.0, State Route 163 and Friars Road, of which \$300,000 is from Fund No. 63022, Private and Other Contributions, and \$461,000 is from Fund No. 30300, TransNet, is authorized for the purpose of executing this Third Amendment to the Agreement for the above referenced Project.

Section 6. That the City Auditor and Comptroller, upon advice from the administering department, is authorized to transfer excess funds, if any, to the appropriate reserves.

Section 7. That this activity is not a "project" and is therefore not subject to CEQA pursuant to State CEQA Guidelines Sections 15061(c)(3). This determination is predicated on Section 15004 of the Guidelines, which provides direction to lead agencies on the appropriate timing for environmental review.

Section 8. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 9. This ordinance, having been introduced and adopted by a two-thirds vote of the members of the San Diego City Council pursuant to Section 99 of the Charter of the City of San Diego, shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Peter A. Mesich
Peter A. Mesich
Deputy City Attorney

PAM:cfq
11/15/07
Or.Dept:E&CP
O-2008-72
Aud.Cert.:2800464

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

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DUPLICATE

CAPITAL IMPROVEMENTS
FOR
THE CITY OF SAN DIEGO
ENGINEERING AND CAPITAL PROJECTS

AGREEMENT
FOR
STATE ROUTE 163 AND FRIARS ROAD

THE CITY OF SAN DIEGO
AND

Dokken Engineering

AGREEMENT BETWEEN THE CITY
OF SAN DIEGO AND *DOKKEN ENGINEERING*
FOR CONSULTING SERVICES

THIS Agreement is made and entered into this **3** day of **June**, 2003 between the City of San Diego, a municipal corporation, and *Dokken Engineering* [Consultant] for the Consultant to provide Professional Services to the City on State Route 163 and Friars Road [Project].

RECITALS

The City wants to retain the services of a professional *Engineering Consulting* firm to provide *Engineering* services [Professional Services].

The Consultant has the expertise, experience and personnel necessary to provide the Professional Services for the Project.

The City and the Consultant [Parties] want to enter into an Agreement [Agreement] whereby the City will retain the Consultant to provide, and the Consultant shall provide, the Professional Services for the Project.

In consideration of the above recitals and the mutual covenants and conditions set forth, herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby set forth their mutual covenants and understandings as follows:

ARTICLE I

PROFESSIONAL SERVICES

The above-listed recitals are true and correct and are hereby incorporated by reference.

1.1 - Scope of Services.

The Consultant shall perform Professional Services as set forth in the written Scope of Services [Exhibit A] at the direction of the City on a lump sum basis specifically enumerated in the Compensation Schedule [Exhibit B], Fee Schedule [Exhibit C], and Time Schedule [Exhibit D].

1.2 Contract Administrator.

The *Engineering and Capital Projects Department* is the contract administrator for this Agreement. The Consultant shall provide Professional Services under the direction of a designated representative of the *Engineering and Capital Projects Department*. The City's designated representative will communicate with the Consultant on all matters related to the administration of this Agreement and the Consultant's performance of the Professional Services rendered hereunder. When this Agreement refers to communications to or with the City, those

communications will be with the designated representative, unless the designated representative or the Agreement specifies otherwise.

1.3 City Modification of Scope of Services.

The City may, without invalidating this Agreement, order changes in the Scope of Services by altering, adding to or deducting from the Professional Services to be performed. All such changes shall be in writing and shall be performed in accordance with the provisions of this Agreement. If any such changes cause an increase or decrease in the Consultant's cost of, or the time required for, the performance of any of the Professional Services, the Consultant shall so notify the City. If appropriate, an equitable adjustment to the Consultant's compensation may be made, provided that any adjustment must be approved by both Parties in writing.

1.4 Written Authorization.

Prior to performing any Professional Services in connection with the Project, the Consultant shall obtain from the City a written authorization to proceed. The Consultant shall advise the City in writing immediately of any anticipated change in the Scope of Services, Compensation Schedule, or Time Schedule, and shall obtain the City's written consent to the change prior to making any changes. In no event shall the City's consent be construed to relieve the Consultant from its duty to render all Professional Services in accordance with applicable laws and accepted industry standards.

1.5 Confidentiality of Services.

All Professional Services performed by the Consultant, including but not limited to all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by the Consultant, pursuant to this Agreement, are for the sole use of the City, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the City. This provision does not apply to information that (a) was publicly known, or otherwise known to the Consultant, at the time that it was disclosed to the Consultant by the City, (b) subsequently becomes publicly known through no act or omission by the Consultant, or (c) otherwise becomes known to the Consultant other than through disclosure by the City except for Subconsultants, covered by Section 4.4, neither the documents nor their contents shall be released to any third party without the prior written consent of the City.

1.6 Competitive Bidding.

The Consultant shall ensure that all plans and specifications prepared, required, or recommended under this Agreement allow for competitive bidding. The Consultant shall design such plans or specifications so that procurement of services, labor or materials are not available from only one source, and shall not design plans and specifications around a single or specific product, piece of major equipment or machinery, a specific patented design, or a proprietary process, unless required by principles of sound engineering practice and supported by a written justification that has been approved in writing by the City. The Consultant shall submit this written justification to the City prior to beginning work on such plans or specifications. Whenever the Consultant recommends a specific product or equipment for competitive

procurement, such recommendation shall include at least two brand names of products that are capable of meeting the functional requirements applicable to the Project.

ARTICLE II

DURATION OF AGREEMENT

2.1 Term of Agreement.

This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement. The terms of this agreement is 36 months from date of execution.

2.2 Time of Essence.

Time is of the essence for this Agreement.

2.3 Notification of Delay.

The Consultant shall immediately notify the City in writing of any delay in completion of the Professional Services. The written notice shall include an explanation of the cause for, and a reasonable estimate of the length of the delay. If the delay affects a material part of the Project, the City may exercise its rights under Sections 2.5-2.8 of this Agreement.

2.4 Delay.

If delays in the performance of the Professional Services are caused by unforeseen events beyond the control of both Parties, such delay may entitle the Consultant to a reasonable extension of time, but such delay shall not entitle the Consultant to damages or additional compensation. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the Consultant's work; inability to obtain materials, equipment or labor; required additional Professional Services; or other specific reasons agreed to between the City and the Consultant; provided, however, that (a) this provision shall not apply and the Consultant shall not be entitled to an extension of time for a delay caused by the acts or omissions of the Consultant; and, (b) that a delay caused by the inability to obtain materials shall not entitle the Consultant to an extension of time unless the Consultant furnishes the City, in a timely manner, documentary proof, to the City's satisfaction, of the inability to obtain materials.

2.5 City's Right to Suspend for Convenience.

The City may, at its sole option and for its convenience, suspend all or any portion of the Consultant's performance of the Professional Services, for a reasonable period of time not to exceed six months. In accordance with the provisions of this Agreement, the City will give written notice to the Consultant of such suspension. In the event of such a suspension, in accordance with the provisions of Article III of this Agreement, the City shall pay to the Consultant a sum equivalent to the reasonable value of the Professional Services the Consultant

has performed up to the date of suspension. Thereafter, the City may rescind such suspension by giving written notice of rescission to the Consultant. The City may then require the Consultant to resume performance of the Professional Services in compliance with the terms and conditions of this Agreement; provided, however, that the Consultant shall be entitled to an extension of time equal to the length of the suspension, unless otherwise agreed to in writing by the Parties.

2.6 City's Right to Terminate for Convenience.

The City may, at its sole option and for its convenience, terminate all or any portion of the Professional Services agreed to pursuant to this Agreement by giving written notice of such termination to the Consultant. Such notice shall be delivered by certified mail with return receipt for delivery to the City. The termination of the Professional Services shall be effective upon receipt of the notice by the Consultant. After termination of this Agreement, the Consultant shall complete any and all additional work necessary for the orderly filing of documents and closing of the Consultant's Professional Services under this Agreement. For services rendered in completing the work, the Consultant shall be entitled to reasonable compensation for the Professional Services performed by the Consultant before the effective date of termination. After filing of documents and completion of performance, the Consultant shall deliver to the City all drawings, plans, calculations, specifications and other documents or records related to both the Project and to the Consultant's Professional Services on the Project. By accepting payment for completion, filing and delivering documents as called for in this paragraph, the Consultant discharges the City of all of the City's payment obligations and liabilities under this Agreement.

2.7 City's Right to Terminate for Default.

If the Consultant fails to perform or adequately perform any obligation required by this Agreement, the Consultant's failure constitutes a Default. If the Consultant fails to satisfactorily cure a Default within ten calendar days of receiving written notice from the City specifying the nature of the Default, the City may immediately cancel and/or terminate this Agreement, and terminate each and every right of the Consultant, and any person claiming any rights by or through the Consultant under this Agreement. The rights and remedies of the City enumerated in Section 2.7 are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against the Consultant.

2.8 City's Right to Terminate for Bankruptcy or Assignment for the Benefit of Creditors.

If the Consultant files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to or demand upon the Consultant, immediately cancel and/or terminate this Agreement, and terminate each and every right of the Consultant, and any person claiming any rights by or through the Consultant. The rights and remedies of the City enumerated in Section 2.8 are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or

remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against the Consultant.

ARTICLE III

COMPENSATION

3.1 General.

The City shall pay the Consultant for all Professional Services and all expenses related to performance under this Agreement, in an amount not to exceed \$717,900, as set forth in the Compensation Schedule. The Consultant shall be entitled to compensation for Professional Services under this Agreement, whether within the Scope of Services or as Additional Services, or as Reimbursable Expenses, based on the Fee Schedule. For the duration of this Agreement, the Consultant shall not be entitled to fees which exceed the Fee Schedule.

3.2 Manner of Payment.

The Consultant shall bill all fees and expenses incurred in accordance with this Agreement directly to the City on a monthly basis.

3.2.1. Payments. The Consultant shall submit one invoice per calendar month for work performed in accordance with the Compensation Schedule and may include reimbursable expenses. The Consultant shall include with each invoice a description of completed work. Undisputed portions of invoices to the City must be in accordance with the Fee Schedule and will be payable if approved, within thirty calendar days of receipt. Consultant shall submit receipts for all reimbursable expenses.

3.3 Additional Services and Reimbursable Expenses.

If the City requires additional Professional Services [Additional Services] beyond the Scope of Services, except for Additional Costs as described in Section 3.4 of this Agreement, the Consultant will be paid an additional fee. For Additional Services, if required, a maximum fee of **\$400,000** will be paid. The City and the Consultant must agree in writing upon such fee for a specific task based on the Fee Schedule prior to the Consultant beginning the Additional Services.

3.4 Additional Costs.

Additional Costs are those costs that can be reasonably determined to be related to the Consultant's errors or omissions, and may include Consultant, City, or Subconsultant overhead, construction, materials, demolition, and related costs. The Consultant shall not be paid for Professional Services required due to the Consultant's errors or omissions, and the Consultant shall be responsible for any Additional Costs associated with such errors or omissions. These Additional Costs may be deducted from monies due, or that become due, the Consultant. Whether or not there are any monies due, or becoming due, Consultant shall reimburse the City for Additional Costs due to the Consultant's errors or omissions.

3.5 Eighty Percent Notification.

The Consultant shall promptly notify the City in writing of any potential cost overruns. Cost overruns include, but are not limited to the following: (1) where anticipated costs to be incurred in the next sixty calendar days, when added to all costs previously incurred, will exceed eighty percent of the maximum compensation for this Agreement; or (2) where the total cost for performance of the Scope of Services appears that it may be greater or less than the maximum compensation for this Agreement.

ARTICLE IV

CONSULTANT'S OBLIGATIONS

4.1 Industry Standards.

The Consultant agrees that the Professional Services rendered under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent professional *Engineering Consulting* firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. Where approval by the City, the City Manager, or other representatives of the City is required, it is understood to be general approval only and does not relieve the Consultant of responsibility for complying with all applicable laws, codes, and good consulting practices.

4.2 Right to Audit.

4.2.1 Access. The City retains the right to review and audit, and the reasonable right of access to Consultant's and all Subconsultant's premises to review and audit Consultant's compliance with the provisions of this Agreement [City's Right]. The City's Right includes the right to inspect and photocopy same, and to retain copies, outside of Consultant's premises, of any and all records with appropriate safeguards, if such retention is deemed necessary by the City in its sole discretion. This information shall be kept by the City in strictest confidence allowed by law.

4.2.2 Audit. The City's Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the City determines is necessary to discover and verify that the Consultant is in compliance with all requirements under this Agreement.

4.2.2.1 Cost Audit. If there is a claim for additional compensation or for Additional Services, the City's Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the City determines is necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

4.2.2.1.1 Accounting Records. The Consultant shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. The Consultant shall make available to the City for review and audit, all

project related accounting records and documents, and any other financial data. Upon the City's request, the Consultant shall submit exact duplicates of originals of all requested records to the City.

4.2.3 City's Right--Binding on Subconsultants. The Consultant shall include the City's Right as described in Section 4.2, in any and all of their subcontracts, and shall ensure that these sections are binding upon all Subconsultants.

4.2.4 Compliance Required before Mediation or Litigation. A condition precedent to proceeding with mandatory mediation provided for in Article VII is the Consultant's full compliance with the provisions of this Section 4.2 within sixty days of the date on which the City mailed a written request to review and audit compliance.

4.3 Insurance.

The Consultant shall not begin Professional Services under this Agreement until it has: a) obtained insurance certificates reflecting evidence of all insurance required in Section 4.3.1; however, the City reserves the right to request, and the Consultant shall submit, copies of any policy upon reasonable request by the City; b) obtained City approval of each company or companies as required by Article IV, Section 4.3.2; c) confirmed that all policies contain the specific provisions required in Article IV, Section 4.3.4.

Further, the Consultant shall not modify any policy or endorsement thereto which increases the City's exposure to loss for the duration of this Agreement.

4.3.1 Types of Insurance. At all times during the term of this Agreement, the Consultant shall maintain insurance coverages as follows:

4.3.1.1 Commercial General Liability. For all of the Consultant's operations, including contractual, property damage, completed operations, and independent Consultant's liability, the Consultant shall keep in full force and effect, during any and all work on this Project, all applicable insurance to cover personal injury, bodily injury and property damage, providing coverage to a combined single limit of \$1 (one) million per occurrence, subject to an annual aggregate of \$2 (two) million for general liability, completed operations and personal injury other than bodily injury. Contractual liability shall include coverage of tort liability to another party to pay for bodily injury or property damage to a third person or organization. Contractual liability limitation endorsement is not acceptable.

4.3.1.2 Commercial Automobile Liability. For all of the Consultant's automobiles including owned, hired and non-owned automobiles, the Consultant shall keep in full force and effect, automobile insurance for bodily injury and property damage providing coverage to a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile [any auto]. The City shall be named as an additional insured, but only for liability arising out of use of Consultant's automobiles and only arising out of Professional Services performed under this Agreement.

4.3.1.3 Architects & Engineers Professional Liability. For all of the Consultant's employees who are subject to this Agreement, the Consultant shall keep in full force

and effect, errors and omissions insurance providing coverage for professional liability with a combined single limit of \$1 (one) million per claim and \$2 (two) million annual aggregate. The Consultant shall ensure both that (1) this policy retroactive date is on or before the date of commencement of the Project; and (2) this policy has a reporting period of three years after the date of completion or termination of this Agreement. The Consultant agrees that for the time period defined above, there will be no changes or endorsements to the policy that increases the City's exposure to loss.

4.3.1.4 Worker's Compensation. For all of the Consultant's employees who are subject to this Agreement and to the extent required by the State of California, the Consultant shall keep in full force and effect, a workers compensation policy. That policy shall provide a minimum of \$1 million of employers liability coverage, and the Consultant shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

4.3.2 Rating Requirements. All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have been given at least an "A" or "A-" and "V" rating by AM BEST, that are licensed to do business in the State of California, and that have been approved by the City.

4.3.3 Deductibles. All deductibles on any policy shall be the responsibility of the Consultant.

4.3.4 Specific Provisions Required. Each policy required under Article IV, Sections 4.3.1.1. through 4.3.1.4 shall expressly provide, and an endorsement shall be submitted to the City, that:

4.3.4.1 Except as to Architects and/or Engineers professional liability insurance and Workers Compensation, The City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds. The City's Additional Insured status must be reflected on additional insured endorsement form CG 20 10, or equivalent, which shall be submitted to the City.

4.3.4.2 The policies are primary and non-contributing to any insurance that may be carried by the City, as reflected in an endorsement which shall be submitted to the City.

4.3.4.3 The policies cannot be canceled, non renewed or materially changed except after thirty calendar days prior written notice by the Consultant to the City by certified mail, as reflected in an endorsement which shall be submitted to the City except for non-payment of premium, in which case ten days notice will be provided.

4.3.4.4 Before performing any Professional Services, the Consultant shall provide the City with all Certificates of Insurance accompanied with all endorsements.

4.3.4.5 The Consultant may obtain additional insurance not required by this Agreement.

4.4 Subconsultants.

The Consultant's hiring of or retaining any third parties [Subconsultants] to perform services related to the Project [Subconsultant Services] is subject to prior approval by the City. The Consultant shall list on the Subconsultants List [Exhibit E (4)] all Subconsultants known to the Consultant at the time this Agreement is entered. If at any time after this Agreement is entered into the Consultant identifies a need for additional Subconsultant Services, the Consultant shall give written notice to the City of the need, at least forty-five days before entering into a contract for such Subconsultant Services. The Consultant's notice shall include a justification, a description of the scope of work, and an estimate of all costs for the Subconsultant Services. The Consultant may request that the City reduce the forty-five day notice period. The City agrees to consider such requests in good faith.

4.4.1 Subconsultant Contract. All contracts entered into between the Consultant and a Subconsultant shall contain the information as described in Sections 4.6, 4.7, 4.10.2, and 4.18, and shall also provide as follows:

4.4.1.1 For each design professional Subconsultant, each Subconsultant shall obtain insurance policies which shall be kept in full force and effect during any and all work on this Project and for the duration of this Agreement. Each Subconsultant shall obtain, and the Consultant shall require the Subconsultant to obtain, all policies described in Section 4.3.1.

4.4.1.2 The Consultant is obligated to pay the Subconsultant, for Consultant- and City-approved invoice amounts, out of amounts paid by the City to the Consultant, not later than fourteen working days from the Consultant's receipt of payment from the City. Nothing in this paragraph shall be construed to impair the right of the Consultant and any Subconsultant to negotiate fair and reasonable pricing and payment provisions among themselves.

4.4.1.3 In the case of a deficiency in the performance of Subconsultant Services, the Consultant shall notify the City in writing of any withholding of payment to the Subconsultant, specifying: (a) the amount withheld; (b) the specific cause under the terms of the subcontract for withholding payment; (c) the connection between the cause for withholding payment and the amount withheld; and (d) the remedial action the Subconsultant must take in order to receive the amount withheld. Once the Subconsultant corrects the deficiency, the Consultant shall pay the Subconsultant the amount withheld within fourteen working days of the Consultant's receipt of the City's next payment.

4.4.1.4 In any dispute between the Consultant and Subconsultant, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The Consultant agrees to defend and indemnify the City as described in Article VI of this Agreement in any dispute between the Consultant and Subconsultant should the City be made a party to any judicial or administrative proceeding to resolve the dispute in violation of this position.

4.4.1.5 The Subconsultant is bound to the City's Equal Opportunity Contracting Program covenants set forth in Article IV, Section 4.6 and Exhibit E of this Agreement.

4.4.1.6 Each Subconsultant shall obtain insurance policies which shall be kept in full force and effect during any and all work on this Project and for the duration of this Agreement. Each Subconsultant shall obtain, and the Consultant shall require the Subconsultant to obtain, all policies described in Section 4.3.1.

4.5 Contract Activity Report.

The Consultant shall submit statistical information to the City as requested in the City's Contract Activity Report [Exhibit E (6)]. The statistical information shall include the amount of subcontracting provided by firms during the period covered by the Contract Activity Report. With the Contract Activity Report, the Consultant shall provide an invoice from each Subconsultant listed in the report. The Consultant agrees to issue payment to each firm listed in the Report within fourteen working days of receiving payment from the City for Subconsultant Services as described in Section 4.4.1.

4.6 Non-Discrimination Requirements.

4.6.1 Compliance with the City's Equal Opportunity Contracting Program.

The Consultant and each of its Subconsultants shall comply with the City's Equal Opportunity Contracting Program Consultant Requirements which is attached hereto as Exhibit E and incorporated herein by this reference.

4.6.2 Non-Discrimination Ordinance. The Consultant shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of Subconsultants, vendors or suppliers. The Consultant shall provide equal opportunity for Subconsultants to participate in subconsulting opportunities. The Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. This language shall be in contracts between the Consultant and any Subconsultants, vendors and suppliers.

4.6.3 Compliance Investigations. Upon the City's request, the Consultant agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all Subconsultants, vendors, and suppliers that the Consultant has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the Consultant for each subcontract or supply contract. The Consultant further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's *Nondiscrimination in Contracting Ordinance* (Municipal Code sections 22.3501-22.3517.) The Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Consultant up to and including contract termination, debarment, and other sanctions for violation of the provisions of the *Nondiscrimination in Contracting Ordinance*. The Consultant further understands and agrees that the procedures, remedies and sanctions provided for in the *Nondiscrimination Ordinance* apply only to violations of said *Nondiscrimination Ordinance*.

4.7 Drug-Free Workplace.

The Consultant agrees to comply with the City's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by Council Resolution No. R-277952 and incorporated into this Agreement by this reference. The Consultant shall certify to the City that it will provide a drug-free workplace by submitting a Consultant Certification for a Drug-Free Workplace form [Exhibit E (7)].

4.7.1 Consultant's Notice to Employees. The Consultant shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition.

4.7.2 Drug-Free Awareness Program. The Consultant shall establish a drug-free awareness program to inform employees about all of the following:

4.7.2.1 The dangers of drug abuse in the work place.

4.7.2.2 The policy of maintaining a drug-free work place.

4.7.2.3 Available drug counseling, rehabilitation, and employee assistance programs.

4.7.2.4 The penalties that may be imposed upon employees for drug abuse violations.

4.7.3 Posting the Statement. In addition to Section 4.7.1 above, the Consultant shall post the drug-free policy in a prominent place.

4.7.4 Subconsultant's Agreements. The Consultant further certifies that each contract for Subconsultant Services for this Project shall contain language that binds the Subconsultant to comply with the provisions of Article IV, Section 4.7 of this Agreement, as required by Sections 2.A.(1) through (3) of Council Policy 100-17. Consultants and Subconsultants shall be individually responsible for their own drug-free work place program.

4.8 Americans with Disabilities Act Statement.

Consultant shall certify that the construction documents and specifications meet all current California Building Standards Code, California Code of Regulations, Title 24 (Title 24) and The Americans with Disabilities Act Accessibility Guidelines (ADAAG) requirements, and are in compliance with The Americans with Disabilities Act of 1990. When a conflict exists between Title 24 and ADAAG, the most restrictive requirement shall be followed.

4.9 Product Endorsement.

The Consultant acknowledges and agrees to comply with the provisions of the City's Administrative Regulation 95-65, concerning product endorsement. Any advertisement identifying or referring to the City as the user of a product or service requires the prior written approval of the City.

4.10 Conflict of Interest.

The Consultant is subject to all federal, state and local conflict of interest laws, regulations and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et. seq. and 81000, et. seq. The City may determine that a conflict of interest code requires the Consultant to complete one or more statements of economic interest disclosing relevant financial interests. Upon the City's request, the Consultant shall submit the necessary documentation to the City.

4.10.1 The Consultant shall establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

4.10.2 The Consultant and its Subconsultants having subcontracts amounting to 1% or more of the value of the Professional Services agreed to under this Agreement are precluded from participating in design services on behalf of the contractor, construction management, and any other construction services related in any way to these Professional Services without the prior written consent of the City.

4.10.3 The Consultant's personnel employed on the Project shall not accept gratuities or any other favors from any Subconsultants or potential Subconsultants. The Consultant shall not recommend or specify any product, supplier, or contractor with whom the Consultant has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

4.10.4 If the Consultant violates any conflict of interest laws or any of these provisions in Section 4.10, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects the Consultant to liability to the City for attorneys fees and all damages sustained as a result of the violation.

4.11 Mandatory Assistance.

If a third party dispute or litigation, or both, arises out of, or relates in any way to the Professional Services provided under this Agreement, upon the City's request, the Consultant, its agents, officers, and employees agree to assist in resolving the dispute or litigation. Consultant's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

4.12 Compensation for Mandatory Assistance.

The City will compensate the Consultant for fees incurred for providing Mandatory Assistance as Additional Services under Section 3.3. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of the Consultant, its agents, officers, and employees, the Consultant shall reimburse the City. The City is then entitled to reimbursement of all fees paid to the Consultant, its agents, officers, and employees for Mandatory Assistance.

4.13 Attorney's Fees related to Mandatory Assistance.

In providing the City with dispute or litigation assistance, the Consultant or its agents, officers, and employees may incur expenses and/or costs. The Consultant agrees that any attorney fees it may incur as a result of assistance provided under Section 4.11 are not reimbursable. The Parties agree this provision does not in any way affect their rights to seek attorney fees under Article VIII, Section 8.8 of this Agreement.

4.14 Energy Conservation Specifications.

Technological advances in energy conservation devices such as lighting and Heating Ventilation and Air Conditioning [HVAC] enable additional energy savings over that required by the State of California Title 24 Energy Standards. The Consultant shall model the energy performance of the building using an acceptable computer model such as Energy Pro, EQuest, DOE-2, Power DOE, HAP 3.22, etc. and present the summary data to the City at or prior to 100% design. This analysis should include life cycle cost analysis showing recovery of construction costs through operation and maintenance costs (e.g., electricity and gas savings.) The Consultant shall prepare a cost savings matrix that lists each device being considered and one, three, five and ten-year project savings. The comparison shall include, but not limited to the following equipment: Lighting, HVAC, Water Heating, and Motors.

The Consultant shall contact the SDG&E New Construction Program at (858) 636-5725 or the San Diego Regional Energy Office at (619) 595-5634 to integrate them into the design process to ensure maximum energy performance and access to technical resources. (Consultant shall endeavor to obtain from SDG&E a UTIL-1 (Utility Incentive Worksheet) to estimate energy savings and incentives available based on the design team energy modeling.)

4.15 Year 2000 Compliance.

The Consultant warrants that the Professional Services on this Project and each product delivered, incorporated or designed for use under this Agreement that contains any software, hardware, firmware or any device which requires or is designed to do any processing, analysis, calculating or tracking of date/time data or information shall be able to accurately process, track, or create such date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, and leap year calculations to the extent necessary for the Project and each product to function correctly and accurately from, into, and between all dates and times, including but not

limited to, from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and later, for the life of the Project.

4.16 Notification of Increased Construction Cost.

If, at any time prior to the City's approval of the final plans and specifications, the Consultant anticipates that the total construction cost will exceed the estimated construction budget, the Consultant shall immediately notify the City in writing. This written notification shall include an itemized cost estimate and a list of recommended revisions which the Consultant believes will bring the construction cost to within the estimated construction budget. The City may either: (1) approve an increase in the amount authorized for construction; or (2) delineate a project which may be constructed for the budget amount; or (3) any combination of (1) and (2).

4.17 Green Building

The project design and construction shall comply with City Council Green Building Policy 900-14 [Exhibit F]. All new or significantly remodeled City facilities shall be designed and constructed to achieve energy consumption levels at least 25 percent below the then current Title 24 standards. An Average pay-back period of five years shall be used as a guide for the aggregate of all energy efficiency measures included in the project.

4.18 Design-Build Competition Eligibility

Any architectural firms, engineering firms, consultants, or individuals that assist the City in the development of any one or more of the following: criteria, preliminary design, or preparation of the request for proposals, shall not be eligible to participate in any subsequent competition with any Design-Build Entity. This prohibition also applies to Sub-consultants hired by the City or hired by any architectural firms, engineering firms, specialty consultants, or individuals retained by the City, who, in the City's sole discretion, are determined to have a competitive advantage.

ARTICLE V

CITY'S OBLIGATIONS

5.1 Ownership of Documents.

Once the Consultant has received any compensation for the Professional Services performed, all documents, including but not limited to, original plans, studies, sketches, drawings, computer printouts and disk files, and specifications prepared in connection with or related to the Scope of Services or Professional Services, shall be the property of the City. The City's ownership of these documents includes use of, reproduction or reuse of and all incidental rights, whether or not the work for which they were prepared has been performed. The City's ownership entitlement arises upon payment or any partial payment for work performed and includes ownership of any and all work product completed. This Section shall apply whether the Consultant's Professional Services are terminated: (a) by the completion of the Project, or (b) in accordance with other provisions of this Agreement. Notwithstanding any other provision of this

paragraph or Agreement, the Consultant shall have the right to make copies of all such plans, studies, sketches, drawings, computer printouts and disk files, and specifications.

The Consultant shall not be responsible for damage caused by subsequent changes to or uses of the plans or specifications, where the subsequent changes or uses are not authorized or approved by the Consultant, provided that the service rendered by the Consultant was not a proximate cause of the damage.

5.2 Additional Consultants or Contractors.

The City reserves the right to employ, at its own expense, such additional consultants or contractors as the City deems necessary to perform work or to provide Professional Services on the Project.

5.3 Employment of City Staff.

This Agreement may be unilaterally and immediately terminated by the City, at its sole discretion, if the Consultant employs an individual who, within the last twelve months immediately preceding such employment did, in the individual's capacity as an officer or employee of the City, participate in, negotiate with, or otherwise have an influence on the recommendation made to the City Council or City Manager in connection with the selection of the Consultant.

5.4 Project Site Safety.

Unless otherwise provided by the Scope of Services in this Agreement, Consultant, Subconsultant and employees are not responsible for general Project site conditions during the course of construction of the Project. The City acknowledges that the construction contractor has primary responsibility for Project site conditions, including safety of all persons and property. This provision shall not be interpreted to in any way relieve the Consultant, Subconsultants or their employees of their obligation under Section 4.1 of this Agreement to comply with all applicable laws, codes and good consulting practices with regard to the maintenance of a safe Project site.

ARTICLE VI

INDEMNIFICATION

6.1 Indemnification and Hold Harmless Agreement.

With respect to any liability, including but not limited to claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the Consultant, or the Consultant's employees, agents, and officers, arising out of any services performed involving this project, except liability for Professional Services covered under Section 6.2, the Consultant agrees to defend, indemnify, protect, and hold harmless the City, its agents, officers, or employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive

negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Consultant, its employees, agents or officers, or any third party. The Consultant's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the City, its agents, officers or employees. This Section in no way alters, affects or modifies the Consultant's obligations and duties under Section 4.3.4.1 herein.

6.2 Indemnification for Professional Services.

As to the Consultant's professional obligations, work or services involving this Project, the Consultant agrees to indemnify and hold harmless the City, its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorneys fees, losses or payments for injury to any person or property, caused directly or indirectly from the negligent acts, errors or omissions of the Consultant or the Consultant's employees, agents or officers.

6.3 Enforcement Costs.

The Consultant agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in Section 6.1 and the indemnity provision in Section 6.2.

ARTICLE VII

FEDERAL REQUIREMENTS

7.1 This Project is funded by State Transportation Funds (STP). All Project work and Agreements will be subject to the review and approval of the State of California Department of Transportation [CALTRANS] and the Federal Highway Administration [FHWA].

7.2 The Consultant and its Subcontractors shall maintain all books, documents, papers, employee time sheets, accounting records, and other evidence pertaining to costs incurred, and shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract, for inspection by the City, CALTRANS, and the FHWA, the Comptroller General of the United States, or their duly authorized representatives.

7.3 The cost principles and procedures for use in the determination of allowable elements of cost will be governed by the Federal Acquisition Regulations in Title 48, CFR 31.

7.4 The Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this agreement without liability, or at its discretion to deduct from the Agreement price or consideration, or otherwise

recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

7.5 The Consultant shall comply with all Federal, State, and Local laws and ordinances applicable to the work. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code. [Exhibit G].

7.6 Neither this Agreement or any part thereof shall be subcontracted, assigned, or transferred by the Consultant except as otherwise provided for in the Agreement.

7.7 The Consultant shall comply with California Government Code section 7550 as follows:

Any document or written report prepared for or under the direction of a State or Local Agency, which is prepared in whole or in part by non-employees of such Agency, shall contain the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of such document or written report; provided, however, that the total cost for work performed by non-employees of the agency exceeds FIVE THOUSAND DOLLARS (\$5,000). The contract and subcontract numbers and dollar amounts shall be contained in a separate section of such document or written report.

When multiple documents or written reports are the subject or product of the contract, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

7.8 All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of 49 CFR 18.36. Some of the situations considered to be restrictive of competition include, but are not limited to:

- (i) Placing unreasonable requirements on firms in order for them to qualify to do business,
- (ii) Requiring unnecessary experience and excessive bonding,
- (iii) Noncompetitive pricing practices between firms or between affiliated companies,
- (iv) Noncompetitive awards to consultants that are on retainer contracts,
- (v) Organizational conflicts of interest,
- (vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and
- (vii) Any arbitrary action in the procurement process.

7.9 The City will perform a cost analysis of its Agreement with the Consultant when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

7.10 The City and the Consultant must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, or other pertinent documents when:

- (i) The City's or the Consultant's procurement procedures or operation fails to comply with the procurement standards in 49 CFR 18.36; or
- (ii) The procurement is expected to exceed the simplified acquisition threshold [currently fixed at \$100,000 by 41 U.S.C. 403(11)] and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or
- (iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product; or
- (iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- (v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

7.11 The City will use procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and standards identified in 49 CFR 18.36.

7.12 Contract modifications are required for any modification in the terms of the original contract that change the cost of the contract; significantly change the character, scope, complexity, or duration of the work; or significantly change the conditions under which the work is required to be performed. A contract modification shall clearly outline the changes made and determine a method of compensation. FHWA approval of contract modifications shall be obtained prior to beginning the work, except that in unusual circumstances the Consultant may be authorized to proceed with work prior to agreement on the amount of compensation and execution of the contract modification, provided the FHWA has previously approved the work and has concurred that additional compensation is warranted.

7.13 The Consultant agrees to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

ARTICLE VIII

MEDIATION

8.1 Mandatory Non-binding Mediation

With the exception of Sections 2.5-2.8 of this Agreement, if a dispute arises out of, or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the Parties agree to first endeavor to settle the dispute in an amicable manner, using mandatory mediation under the Construction Industry Mediation Rules of the American Arbitration Association [AAA] or any other neutral organization agreed upon before having recourse in a court of law.

8.2 Mandatory Mediation Costs

The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and expenses of the mediator [Mediator], and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be borne equally by the Parties, unless they agree otherwise.

8.3 Selection of Mediator

A single Mediator that is acceptable to both Parties shall be used to mediate the dispute. The Mediator will be knowledgeable in construction aspects and may be selected from lists furnished by the AAA or any other agreed upon Mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing Party. If the Mediator is selected from a list provided by AAA, the initiating Party shall concurrently file with AAA a "Request for Mediation" along with the appropriate fees, a list of three requested Mediators marked in preference order, and a preference for available dates.

8.3.1. If AAA is selected to coordinate the mediation [Administrator], within ten working days from the receipt of the initiating Party's Request for Mediation, the opposing Party shall file the following: a list of preferred Mediators listed in preference order after striking any Mediators to which they have any factual objection, and a preference for available dates. If the opposing Party strikes all of initiating Party's preferred Mediators, opposing Party shall submit a list of three preferred Mediators listed in preference order to initiating Party and Administrator. Initiating Party shall file a list of preferred Mediators listed in preference order, after striking any Mediator to which they have any factual objection. This process shall continue until both sides have agreed upon a Mediator.

8.3.2. The Administrator will appoint or the Parties shall agree upon the highest, mutually preferred Mediator from the individual Parties' lists who is available to serve within the designated time frames.

8.3.3. If the Parties agree not to use AAA, then a Mediator, date and place for the mediation shall be agreed upon.

8.4 Conduct of Mediation Sessions

Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions will be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.

8.4.1. Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

8.4.2. Any agreements resulting from mediation shall be documented in writing. All mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

ARTICLE IX

MISCELLANEOUS

9.1 Notices.

In all cases where written notice is required under this Agreement, service shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement. For the purpose of this Agreement, unless otherwise agreed in writing, notice to the City shall be addressed to: *1010 Second Avenue, Suite 1200, San Diego, CA 92101-4905* and notice to the Consultant shall be addressed to: *Dokken Engineering, 9665 Chesapeake Drive, Suite 435, San Diego, CA 92123-1367*.

9.2 Headings.

All article headings are for convenience only and shall not affect the interpretation of this Agreement.

9.3 Non-Assignment.

The Consultant shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without the City's prior written approval. Any assignment in violation of this paragraph shall constitute a Default and is grounds for immediate termination of this Agreement, at the sole discretion of the City. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee.

9.4 Independent Contractors.

The Consultant and any Subconsultant employed by the Consultant shall be independent contractors and not agents of the City. Any provisions of this Agreement that may appear to give the City any right to direct the Consultant concerning the details of performing the Professional Services, or to exercise any control over such performance, shall mean only that the Consultant shall follow the direction of the City concerning the end results of the performance.

9.5 Consultant and Subconsultant Principals for Professional Services.

It is understood that this Agreement is for unique Professional Services. Retention of the Consultant's Professional Services is based on the particular professional expertise of the individuals rendering the services set forth in the Scope of Services. Accordingly, portions of the described service may not be delegated to other members of the team or Subconsultants without prior written consent by the City. It is mutually agreed that *Chris Johnson* is the principal person responsible for delivery of all Professional Services and may not be removed from the Project without the City's prior written approval. In the event *Chris Johnson* becomes unavailable for any reason, the City must be consulted as to any replacement. Further, the City reserves the right, after consultation with the Consultant, to require removal of Consultant's employees or agents.

9.6 Covenants and Conditions.

All provisions of this Agreement expressed as either covenants or conditions on the part of the City or the Consultant, shall be deemed to be both covenants and conditions.

9.7 Compliance with Controlling Law.

The Consultant shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, including California Labor Code section 1720 as amended in 2000 relating to the payment of prevailing wages during the design and pre-construction phases of a project, including inspection and land surveying work [Exhibit G]. In addition, the Consultant shall comply immediately with all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

9.8 Jurisdiction, Venue, and Attorney's Fees.

The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California. The prevailing Party in any such suit or proceeding shall be entitled to a reasonable award of attorney's fees in addition to any other award made in such suit or proceeding.

9.9 Successors in Interest.

This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity,

and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.

9.10 Integration.

This Agreement and the exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties or an amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.

9.11 Counterparts.

This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

9.12 No Waiver.

No failure of either the City or the Consultant to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach or of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

9.13 Severability.

The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

9.14 Municipal Powers.

Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.

9.15 Drafting Ambiguities.

The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

9.16 Signing Authority.

The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

9.17 Conflicts Between Terms.

If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its *Engineering and Capital Projects Department* Director, pursuant to Resolution No. R- 298019 authorizing such execution, and by the Consultant.

Dated this 6 day of June, 2003.

THE CITY OF SAN DIEGO

By: [Signature]

Title: Director

Print Name: Frank Belock, Jr.

Date: 6-6-03

I HEREBY CERTIFY I can legally bind *Dokken Engineering* and that I have read all of this Agreement, this 28th day of MARCH, 2003.

By: [Signature]

Title: PROJECT MANAGER

Print Name: CHRIS JOHNSON

Date: 3/28/03

00th I HEREBY APPROVE the form and legality of the foregoing Agreement this day of June, 2003.

CASEY GWINN, City Attorney

By: [Signature]

Title: Deputy City Attorney

Print Name: Laura O. Del Valle

Date: 6/20/2003

FIRST AMENDMENT TO AGREEMENT

This First Amendment to Agreement for State Route 163 and Friars Road: On file in the Office of the City Clerk as Document No. RR-298019 Agreement dated June 03, 2003; [Agreement], by and between the City of San Diego, a municipal corporation, and Dokken Engineering [Dokken].

RECITALS

- A. The parties entered into the Agreement to provide Professional Engineering Services for the State Route 163 and Friars Road project.
- B. The City desires to modify that Agreement for Dokken to perform Professional Engineering Services and to modify the total compensation to allow for the Scope of Services for this First Amendment for an amount not to exceed \$400,000.00.
- C. Dokken desires to provide the services required under this First Amendment.

NOW, THEREFORE, in consideration of the Recitals stated above and incorporated herein by this reference and the mutual obligations of the parties expressed herein, the City and Dokken agree to modify the original agreement of the Agreement, a copy of which is attached hereto and incorporated herein by reference, as follows:

1. Section 1.1 is amended to read as follows:

ADD: "The consultant shall perform Professional Services as set forth in the written Scope of Services [Exhibit A-1] at the direction of the City for a fixed fee specifically enumerated in the Compensation Schedule [Exhibit B-1], Fee Schedule [Exhibit C-1], and Time Schedule [Exhibit D-1] for an additional amount not to exceed FOUR HUNDRED THOUSAND

DOCUMENT NO. RR300220

FILED MAR 14 2005
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

DOLLARS (\$400,000.00) for a Total Compensation not to exceed ONE MILLION FIVE HUNDRED SEVENTEEN THOUSAND NINE HUNDRED DOLLARS (\$1,517,900.00)".

2. Section 3.1 is amended to read as follows:

ADD: "The City shall pay the Consultant for all Professional Services and all expenses related to performance under this First Amendment to the Agreement, in a fixed fee amount not to exceed FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00), as set forth in the Compensation Schedule [Exhibit B-1]. The Consultant shall be entitled to compensation for Professional Services under this First Amendment to the Agreement, whether within the Scope of Services or as Additional Services, based on the Fee Schedule [Exhibit C-1]. For the duration of this First Amendment to the Agreement, the Consultant shall not be entitled to fees which exceed the Fee Schedule."

3. The following attachments are incorporated herein by reference as follows:

Exhibit A-1 - Scope of Services, Exhibit B-1 - Compensation Schedule, Exhibit C-1 - Fee Schedule, and Exhibit D-1 - Time Schedule.

4. The Parties agree that this First Amendment to the Agreement represents the entire understanding of Dokken and the City and affects only those paragraphs referred to, and all other terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, this First Amendment to the Agreement is executed by the
City, acting by and through its City Council, and by Dokken.

Dated this 7th day of April, 2005.

THE CITY OF SAN DIEGO

By: [Signature]
Print Name: Patti Boekamp
Title: Director
Date: 4/7/05

Dokken Engineering

By: [Signature]
Print Name: CHRIS JOHNSON
Title: REGIONAL MANAGER
Date: 1-27-05

I HEREBY APPROVE the form and legality of the foregoing Amendment on this
1st day of April, 2005.

Michael J. Aguirre, City Attorney

By: [Signature]
Print Name: Sueary Cola
Title: Deputy City Attorney
Date: 4-1-05

JL:db
10/17/01

R-300220

SECOND AMENDMENT TO AGREEMENT

This Second Amendment to Agreement for Consulting Services for State Route 163 and Friars Road [Agreement] is by and between the City of San Diego, a municipal corporation, and Dokken Engineering [Consultant].

RECITALS

A. The City and Consultant [collectively referenced herein as "the Parties"] entered into the Agreement, which is on file in the Office of the City Clerk as Document No. RR-298019, to provide professional engineering services for the preparation of Caltrans Project Report and Environmental Clearance of State Route 163 and Friars Road [Project].

B. The Parties entered into a First Amendment to the Agreement, which is on file in the Office of the City Clerk as Document No. RR-300220, for additional work that was not included in the Original Agreement due to an enlarged project boundaries.

C. The City desires to execute a Second Amendment to the Agreement with Consultant to add to the scope of work for the Project to include additional support and environmental technical studies for the preparation of the Environmental Impact Report (EIR) and Draft Report, in an amount not to exceed \$150,000.00.

D. Consultant desires to provide the services required under this Second Amendment.

NOW, THEREFORE, in consideration of the Recitals stated above and incorporated herein by this reference and the mutual obligations of the parties expressed herein, the City and Consultant agree to modify the Agreement, a copy of which is attached hereto and incorporated herein by reference, as follows:

DOCUMENT NO. 301928

FILED SEP 26 2006
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

1. Section 1.1 is amended to read as follows:

ADD "The Consultant shall perform Professional Services as set forth in the written Scope of Services [Exhibit A-2] at the direction of the City for a fixed fee specifically enumerated in the Compensation Schedule [Exhibit B-2] and Fee Schedule [Exhibit C-2], for an additional amount not to exceed ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000.00) for a Total Compensation not to exceed ONE MILLION SIX HUNDRED SIXTY SEVEN THOUSAND NINE HUNDRED DOLLARS (\$1,667,900.00)."

2. Section 3.1 is amended to read as follows:

ADD: "The City shall pay the Consultant for all Professional Services and all expenses related to performance under this Second Amendment to the Agreement, in a fixed fee amount not to exceed ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000.00), as set forth in the Compensation Schedule [Exhibit B-2]. The Consultant shall be entitled to compensation for Professional Services under this Second Amendment to the Agreement, whether within the Scope of Services or as Additional Services, based on the Fee Schedule [Exhibit C-2]. For the duration of this Second Amendment to the Agreement, the Consultant shall not be entitled to fees which exceed the Fee Schedule."

3. The following attachments are incorporated herein by reference as follows:
Exhibits A-2 - Scope of Services, B-2 - Compensation Schedule, C-2 - Fee Schedule, and D-2 - Time Schedule.

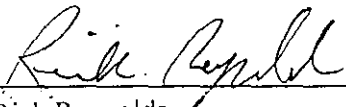
4. The Parties agree that this Second Amendment to the Agreement represents the entire understanding of the Parties and affects only those paragraphs referred to, and all other terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, this Second Amendment to the Agreement is executed by the
City of San Diego, acting by and through its Mayor or his designee, pursuant to Resolution No.

R- 301928, authorizing such execution, and by the Consultant.

Dated this _____ day of SEP 26 2006, 2006.

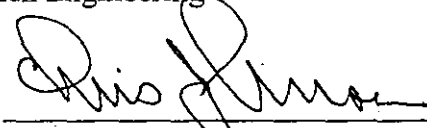
THE CITY OF SAN DIEGO

By: 
Rick Reynolds
Assistant Chief Operating Officer

Date: 10/27/06

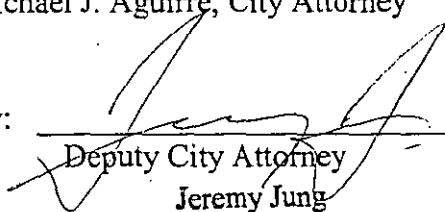
I HEREBY CERTIFY that I can legally bind Dokken Engineering and that I have read all
of this Amendment this 31 day of July, 2006.

Dokken Engineering

By: 
Authorized Representative
Print Name: CHRIS JOHNSON
Title: VICE PRESIDENT

I HEREBY APPROVE the form and legality of the foregoing Amendment on this
2 day of November, 2006.

Michael J. Aguirre, City Attorney

By: 
Deputy City Attorney
Jeremy Jung

R- 301928

THIRD AMENDMENT TO AGREEMENT

This Third Amendment to Agreement for Consulting Services for State Route 163 and Friars Road [Agreement] is by and between the City of San Diego, a municipal corporation, and Dokken Engineering [Consultant].

RECITALS

A. The City and Consultant [collectively referenced herein as "the Parties"] entered into the Agreement, which is on file in the Office of the City Clerk as Document No. RR-298019, dated June 3, 2003 to provide professional engineering services for the preparation of Caltrans Project Report and Environmental Clearance of State Route 163 and Friars Road [Project].

B. The Parties entered into a First Amendment to the Agreement, dated March 14, 2005 , which are on file in the Office of the City Clerk as Documents No. RR-300220 for the purposes of upgrading the environmental document from a Mitigated Negative Declaration to an Environmental Impact Report and providing the technical studies for the expanded project boundaries.

C. The Parties entered into a Second Amendment to the Agreement, dated September 26, 2006, which is on file in the Office of the city Clerk as Document RR-301928 for the purposes of providing additional traffic analysis, engineering support, and additional coordination meetings for the Environmental Impact Report and Project Study Report.

D. The City desires to execute a Third Amendment to the Agreement with the Consultant which will include additional services outside of the current scope, in an amount

not to exceed \$761,000. The extra work is a result of the increased project area and additional geotechnical, traffic, utility, cultural and visual impact studies, a water quality technical report, landscape modification, updating environmental technical studies and applying for permits, biological assessment, jurisdictional delineation report, and updating the draft/final project report and EIR Environmental Document.

E. Consultant desires to provide the services required under this Third Amendment.

NOW, THEREFORE, in consideration of the Recitals stated above and incorporated herein by this reference and the mutual obligations of the parties expressed herein, the City and Consultant agree to modify the Agreement, a copy of which is attached hereto and incorporated herein by reference, as follows:

1. Section 1.1 is amended to read as follows:

ADD "The Consultant shall perform Professional Services as set forth in the written Scope of Services [Exhibit A-3] at the direction of the City for a fixed fee specifically enumerated in the Compensation Schedule [Exhibit B-3] and Fee Schedule, for an additional amount not to exceed SEVEN HUNDRED SIXTY ONE THOUSAND DOLLARS (\$761,000) for a Total Compensation not to exceed TWO MILLION FOUR HUNDRED TWENTY EIGHT THOUSAND AND NINE HUNDRED DOLLARS (\$2,428,900)."

2. Section 1.2 is amended to read as follows:

ADD to the last sentence "However, when this Agreement refers to an act or approval to be performed by City, that act or approval shall be performed by the Mayor or his designee, unless the Agreement specifies otherwise."

3. Section 1.3 is amended to read as follows:

DELETE the last sentence and INSERT: "If the City deems it appropriate, an equitable adjustment to the Design Professional's compensation or time for performance may be made, provided that any adjustment must be approved by both Parties in writing in accordance with Section 9.1 of this Agreement."

4. Section 2.1 is amended to read as follows:

DELETE in its entirety and INSERT: "**2.1 Term of Agreement.** This agreement shall be effective on the date it is executed by the last Party to sign the Agreement. The terms of this agreement is 72 months from the date of execution."

5. Section 2.2 is amended to read as follows:

DELETE in its entirety and ADD: "Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement. The time for performance of the Scope of Services (Exhibit A) is set forth in the Time Schedule (Exhibit D)."

6. Section 2.7 is amended to read as follows:

INSERT after first sentence: "A Default includes the Design Professional's failure to adhere to the Time Schedule."

7. Section 3.1 is amended to read as follows:

ADD: "The City shall pay the Consultant for all Professional Services and all expenses related to performance under this Third Amendment to the Agreement, in a fixed fee amount not to exceed SEVEN HUNDRED SIXTY ONE THOUSAND DOLLARS (\$761,000), as set forth in the Compensation Schedule [Exhibit B-3]. The Consultant shall be entitled to compensation for Professional Services under this Third Amendment to the Agreement, whether

within the Scope of Services or as Additional Services, based on the Fee Schedule [Exhibit C-3]. For the duration of this third Amendment to the Agreement, the Consultant shall not be entitled to fees which exceed the Fee Schedule.”

8. Section 3.2 is amended to read as follows:

DELETE in its entirety and ADD :” The City shall pay the Design Professional in accordance with the Compensation and Fee Schedule (Exhibit C). For the duration of this Agreement, the Design Professional shall not be entitled to fees, including fees for expenses, that exceed the amounts specified in the Compensation and Fee Schedule. The Design Professional shall submit one invoice per calendar month in a form acceptable to City in accordance with the Compensation and Fee Schedule. The Design Professional shall include with each invoice a description of completed Professional Services, reasonably related expenses, if any, and all other information, including but not limited to: the progress percentage of the Scope of Services and/or deliverables completed prior to the invoice date, as required by the City. The City will pay undisputed portions of invoices within thirty calendar days of receipt.”

9. Section 3.3 is amended to read as follows:

ADD after the last sentence: “The City will pay the Design Professional for the performance of Additional Services in accordance with Section 3.2.”

10. Section 4.3 is amended to read as follows:

ADD after last sentence of first paragraph: “Design Professional’s liabilities, including but not limited to Design Professional’s indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that

the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Agreement and Design Professional's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract by the City."

11. Section 4.3.1.1 is amended to read as follows:

DELETE in its Entirety and INSERT:" Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of **\$1,000,000** per occurrence and subject to an annual aggregate of **\$2,000,000**. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy."

12. Article IV is to be amended as follows:

ADD the following section:

"4.3.1.5 Architects & Engineers Professional Liability.

For all of the Design Professional's employees who are subject to this Agreement, the Design Professional shall keep in full force and effect, Professional Liability coverage for professional liability with a limit of \$1 (one) million per claim and \$2 (two) million annual aggregate. The Design Professional shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of the Project; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Project or termination of this

Agreement whichever occurs last. The Design Professional agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the City's exposure to loss. All defense costs shall be outside the limits of the policy."

13. Section 4.3.2 is amended to read as follows:

DELETE in its entirety and INSERT: "Except for the State Compensation Insurance Fund, all insurance required by this Contract or in the Special General Conditions shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the City."

14. Section 4.3.3 is amended to read as follows:

DELETE in its entirety and INSERT: "All deductibles on any policy shall be the responsibility of the Design Professional and shall be disclosed to the City at the time the evidence of insurance is provided."

15. Article IV is to be amended as follows:

ADD the following sections:

"4.3.5 Acceptability of Insurers.

4.3.5.2 The City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted

carriers described herein.

4.3.6 Required Endorsements.

The following endorsements to the policies of insurance are required to be provided to the City before any work is initiated under this Agreement.

4.3.6.1 Commercial General Liability Insurance Endorsements.

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of Design Professional's insurance and shall not contribute to it.

CANCELLATION. Except as provided for under California Law, the policy or policies must be endorsed to provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Such notice shall be addressed to the City at the address specified in Section 9.1 "Notices."

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that the Design Professional's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

4.3.6.2 Automobile Liability Insurance Endorsements

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of the Design Professional.

CANCELLATION. Except as provided for under California Law, the policy or policies must be endorsed to provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payments of premium) of cancellation or non-renewal of the policy or policies. Such notice shall be addressed to the City at the address specified in Section 9.1 "Notices."

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that Design Professional's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

4.3.6.3 Worker's Compensation and Employer's Liability Insurance

Endorsements.

CANCELLATION. Except as provided for under California law, the policy or policies must be endorsed to provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Such notice shall be addressed to the City at the address specified in Section 9.1 "Notices."

WAIVER OF SUBROGATION. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the City.

4.3.6.4 Architects & Engineers Professional Liability Insurance.

CANCELLATION. Except as provide for under California Law, the policy or policies must be endorsed to provide that the City is entitled to thirty (30) days prior written notice

(10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Such notice shall be addressed to the City at the address specified in Section 9.1 "Notices."

4.3.7 Reservation of Rights. The City reserves the right, from time to time, to review the Design Professional's insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to the City. The City will reimburse the Design Professional for the cost of the additional premium for any coverage requested by the City in excess of that required by this Agreement without overhead, profit, or any other markup.

4.3.9 Excess Insurance. All policies providing excess coverage to the City shall follow the form of the primary policy or policies including but not limited to all endorsements."

16. Section 4.4.1.1 is amended as follows:

DELETE in its entirety and INSERT: "Each Subcontractor shall obtain insurance policies which shall be kept in full force and effect during any and all work on this Project and for the duration of this Agreement. Each Subcontractor shall obtain, and the Design Professional shall require the Subcontractor to obtain, all policies described in Section 4.3.1 in the amounts required by the City, which shall not be greater than the amounts required of the Design Professional."

17. Article IV is to be amended as follows:

ADD the following section:

"4.4.1.7 The City is an intended beneficiary of any work performed by the

Subcontractor for purposes of establishing a duty of care between the Subcontractor and the

City.”

18. Section 4.6.1 is amended as follows:

ADD to the last sentence: “The Design Professional shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The Design Professional shall provide equal opportunity in all employment practices. The Design Professional shall ensure that its Subcontractors comply with the City's Equal Opportunity Contracting Program Design Professional Requirements. Nothing in this Section shall be interpreted to hold the Design Professional liable for any discriminatory practice of its Subcontractors.”

19. Section 4.8 is amended as follows:

DELETE in its entirety and ADD: “Design Professional has sole responsibility for ensuring that all Project plans and other design services comply with all accessibility requirements under Title 24 of the California Code of Regulations, known as the California Building Code (Title 24), and under the Americans with Disabilities Act Accessibility Guidelines (ADAAG) in effect at the time the designs are submitted to the City for review. When a conflict exists between Title 24 and ADAAG, the most restrictive requirement shall be followed by Design Professional (i.e., that which provides the most access). Design Professional warrants and certifies that any and all plans and specifications prepared for the City in accordance with this agreement shall meet all requirements under Title 24 and ADAAG. Design Professional understands that while the City will be reviewing Design Professional’s designs for compliance in specific and certain areas under Title 24 and ADAAG prior to acceptance of Design

Professional's designs, Design Professional understands and agrees that the City's access review process and its acceptance of Design Professional's designs in no way limits the Design Professional's obligations under this agreement to prepare designs that comply with all requirements under Title 24 and ADAAG."

20. Section 4.10 is amended as follows:

DELETE in its entirety and INSERT "The Design Professional is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et. seq. and 81000, et. seq., and the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code at sections 27.3501 to 27.3595."

21. Article IV is to be amended as follows:

ADD the following sections:

"4.10.1.1 If, in performing the Professional Services set forth in this Agreement, any member of the Design Professional's organization makes, or participates in, a "governmental decision" as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in the department's conflict of interest code, the individual shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the individual's relevant financial interests. The determination as to whether any individual members of the Design Professional's organization must make disclosures of relevant financial interests is set forth in the

Determination Form (Exhibit H).

4.10.1.2 If a determination is made that certain individuals must disclose relevant financial interests, the statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. The individual shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that the individuals are subject to a conflict of interest code. Each year thereafter, the individuals shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which the individual was subject to a conflict of interest code. A Form 700 (Leaving Office Statement) shall also be filed when the individual discontinues services under this Agreement.

4.10.1.3 If the City requires an individual member of the Design Professional's organization to file a statement of economic interests as a result of the Professional Services performed, the individual shall be considered a "City Official" subject to the provisions of the City of San Diego Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this Agreement."

22. Section 4.17 is amended as follows:

DELETE in its entirety and INSERT: "**4.17 Sustainable Building Policy.** The Project design and construction shall comply with City Council Green Building Policy 900-14 (Exhibit I). All new or significantly remodeled City facilities shall be designed and constructed to achieve at a minimum the Leadership in Energy and Environmental Design (LEED) "Silver"

Level Certification. “

23. Article IV is to be amended as follows:

ADD the following section:

“4.19 Storm Water Management Discharge Control. Unless specifically removed from the Scope of Work (Exhibit A), the Design Professional shall comply with Section 43.03 of the San Diego Municipal Code, Storm Water Management Discharge Control, and any and all Best Management Practice guidelines and pollution elimination requirements as may be established by the Enforcement Official. Further, the Design Professional shall prepare and incorporate into the construction documents a Storm Water Pollution Prevention Plan (SWPPP) to be implemented by the contractor during Project construction. Where applicable, the SWPPP shall comply with both the California Regional Water Quality Control Board Statewide General Construction Storm Water permit and National Pollution Discharge Elimination System permit requirements and any municipal regulations adopted pursuant to the permits.”

24. Section 6.1 is to be amended to read as follows:

DELETE in its entirety and INSERT: **“6.1 Indemnification.** Other than in the performance of design professional services which shall be solely as addressed in Section 6.2 below, to the fullest extent permitted by law, Design Professional shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, agents, departments, officials, and employees [Indemnified Parties] from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Design Professional or its Subcontractors), expense and liability of every kind, nature and

description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services performed under this Agreement by the Design Professional, any Subcontractor, anyone directly or indirectly employed by them, or anyone that they control. The Design Professional's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties."

25. Section 6.2 is to be amended to read as follows:

DELETE in its entirety and INSERT:

"6.2 Design Professional Services Indemnification and Defense.

6.2.1 Design Professional Services Indemnification. To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782.8), with respect to the performance of design professional services, Design Professional shall indemnify and hold harmless the City, its officers, or employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.

6.2.2 Design Professional Services Defense. Parties will work in good faith to procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees."

26 Section 6.3 is to be amended to read as follows:

DELETE in its entirety and INSERT: "**6.3 Insurance.** The provisions of this Article are not limited by the requirements of Section 4.3 related to insurance."

27 Article VI is to be amended as follows:

ADD the following section:

"**6.4 Enforcement Costs.** The Design Professional agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in this Article."

28 Section 9.5 is amended as follows:

ADD after the last sentence: "Removal of any member of the Project Team with out notice and approval by the City vide may be considered a default of the terms and conditions of this Agreement by the Design Professional. In the event any member of the Project Team becomes unavailable for any reason, the City must be consulted as to any replacement. If the City does not approve of a proposed replacement, the City may terminate this Agreement pursuant to section 2.6 of this Agreement."

29. Article IX is amended to read as follows:

ADD new section:

"**9.18 Design Professional Evaluation.** City will evaluate Design Professional's performance of Professional Services on the Project using the Consultant Evaluation Form (Attachment 1).

9.19 Exhibits Incorporated. All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

9.20 Survival of Obligations. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with this Agreement, as well as all continuing obligations indicated in this Agreement, shall survive, completion and acceptance of the Professional Services and termination or completion of the Agreement.”

30. Article X is to be added as follows:

ADD new sections:

“ARTICLE X

INTELLECTUAL PROPERTY RIGHTS

10.1 Work For Hire. All original designs, plans, specifications, reports, documentation, and other informational materials, whether written or readable by machine, originated or prepared exclusively for the City pursuant to this Agreement (Deliverable Materials) is “work for hire” under the United States Copyright law and shall become the sole property of the City and shall be delivered to the City upon request. The Contractor, including its employees, and independent Subcontractor(s), shall not assert any common law or statutory patent, copyright, trademark, or any other intellectual proprietary right to the City to the deliverable Materials.

10.2. Rights in Data. All rights (including, but not limited to publication(s), registration of copyright(s), and trademark(s)) in the Deliverable Materials, developed by the Contractor, including its employees, agents, talent and independent Subcontractors pursuant to this Agreement are the sole property of the City. The Design Professional, including its

employees, agents, talent, and independent Subcontractor(s), may not use any such Product mentioned in this article for purposes unrelated to Design Professional's work on behalf of the City without prior written consent of the City.

10.3 Intellectual Property Rights Assignment. Design Professional, its employees, agents, talent, and independent Subcontractor(s) agree to promptly execute and deliver, upon request by City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials; and cooperate and assist in the prosecution of any action or opposition proceeding involving said rights and any adjudication of the same.

10.4 Moral Rights. Design Professional, its employees, agents, talent, and independent Subcontractor(s) hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Deliverable Materials which Design Professional, its employees, agents, talent, and independent Subcontractor(s), may now have or which may accrue to Design Professional, its employees, agents, talent, and independent Subcontractor(s)' benefit under U.S. or foreign copyright laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the and the right to object to any modification, translation or use of said content, and any similar rights existing under judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is

denominated or referred to as a moral right.

10.5 Subcontracting. In the event that Design Professional utilizes a Subcontractor(s) for any portion of the Work that is in whole or in part of the specified Deliverable(s) to the City, the agreement between Design Professional and the Subcontractor [Subcontractor Agreement] shall include a statement that identifies that the Deliverable/Work product as a “work-for hire” as defined in the Act and that all intellectual property rights in the Deliverable/Work product, whether arising in copyright, trademark, service mark or other belongs to and shall vest solely with the City. Further, the Subcontractor Agreement shall require that the Subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to the City, all titles, rights and interests in and to said Work/Deliverable, including all copyrights and other intellectual property rights. City shall have the right to review any Subcontractor agreement for compliance with this provision.

10.6 Publication Design. Professional may not publish or reproduce any Deliverable Materials, for purposes unrelated to Design Professional’s work on behalf of the City without prior written consent of the City.

10.7 Intellectual Property Warranty and Indemnification. Design Professional represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this contract are either original, not encumbered and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole

discretion, to require Design Professional to produce, at Design Professional's own expense, new non-infringing materials, deliverables or Works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Design Professional further agrees to indemnify and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages of any type alleging or threatening that any materials, deliverables, supplies, equipment, services or Works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claims of Infringement). If a Third Party Claim of Infringement is threatened or made before Design Professional receives payment under this contract, City shall be entitled, upon written notice to Design Professional, to withhold some or all of such payment.

10.8 Enforcement Costs. The Design Professional agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in Article 8, including but not limited to, attorney's fees.

10.9 San Diego's Strong Mayor Form of Governance. All references to 'City Manager' in this Agreement and all subsequent amendments thereto shall be deemed to refer to 'Mayor'. This section becomes effective on January 1, 2006 and shall remain in effect for the duration the City operates under the mayor-council (commonly referred to as 'strong mayor') form of governance pursuant to article XV of the City of San Diego City Charter."

31. The following attachments are incorporated herein by reference as follows:

Exhibits A-3 - Scope of Services, B-3 - Compensation Schedule, C-3 - Fee Schedule, and D-3 - Time Schedule.

32. The Parties agree that this Third Amendment to the Agreement represents the entire understanding of the Parties and affects only those paragraphs referred to, and all other terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, this Third Amendment to the Agreement is executed by the
City of San Diego, acting by and through its Mayor or his designee, pursuant to Resolution No.
R- _____, authorizing such execution, and by the Consultant.

Dated this _____ day of _____, 2007.

THE CITY OF SAN DIEGO

By: _____

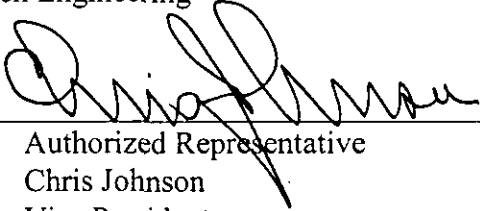
W. Downs Prior
Principal Contract Specialist

Date: _____

I HEREBY CERTIFY that I can legally bind Dokken engineering and that I have read all
of this Amendment this _____ day of _____, 2007.

Dokken Engineering

By: _____


Authorized Representative
Chris Johnson
Vice President

I HEREBY APPROVE the form and legality of the foregoing Amendment on this
_____ day of _____, 2007.

Michael J. Aguirre, City Attorney

By: _____

Deputy City Attorney

DETERMINATION FORM

**CONFLICT OF INTEREST CODE:
DETERMINATION OF APPLICABILITY TO CONSULTANT**

Name of Consultant & Company:

**Dokken Engineering
5675 Ruffin Road, Suite 250
San Diego, CA 92123-1367**

Consultant Duties:

Contract # H031387, is to provide professional engineering services for the preparation of Caltrans Project Report and Environmental Clearance of State Route 163 and Friars Road

Disclosure determination:

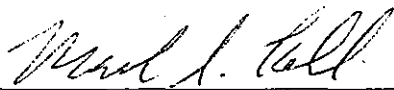
☒ X Consultant will not be "making a government decision" or "serving in a staff capacity" as defined in Sections A and B attached. No disclosure required.

☐ Consultant will be "making a government decision" or "serving in a staff capacity" as defined in Sections A and B attached. Consultant is required to file a Statement of Economic Interests with the City Clerk of the City of San Diego in a timely manner as required by law.

☐ Disclosure required to the broadest level.

☐ Disclosure required to a limited extent:

By:



Mark Koll

12/19/07

Date

*Forward a copy of this form to the Consultant to notify them of the determination.

*Forward a copy of this form to the City Clerk's office to go on file for reporting purposes.

DETERMINATION FORM**ATTACHMENT TO DETERMINATION FORM - DEFINITION OF "CONSULTANT"**

A "consultant" is an individual who, pursuant to a contract with a state or local government agency:

(A) Makes a governmental decision whether to:

1. Approve a rate, rule or regulation;
2. Adopt or enforce a law;
3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
4. Authorize the City to enter into, modify, or renew a contract provided it is the type of contract that requires City approval;
5. Grant City approval to a contract that requires City approval and to which the City is a party, or to the specifications for such a contract;
6. Grant City approval to a plan, design, report, study, or similar item;
7. Adopt, or grant City approval of, policies, standards, or guidelines for the City, or for any subdivision thereof; or

(B) Serves in a staff capacity with the City and in that capacity participates in making a governmental decision as defined in Regulation 18702.2 or performs the same or substantially all the same duties for the City that would otherwise be performed by an individual holding a position specified in the City's Conflict of Interest Code.

An individual "serves in a staff capacity" if he or she performs substantially all the same tasks that normally would be performed by staff member of a governmental entity. In most cases, individuals who work on only one project or a limited range of projects for an agency are not considered to be working in a "staff capacity." The length of the individual's service to the agency is relevant. Also, the tasks over the relevant period of time must be substantially the same as a position that is or should be specified in the City's conflict of interest code.

An individual "participates in making a governmental decision" if he or she: (1) negotiates, without substantive review, with a governmental entity or private person regarding the decision; or (2) advises or makes recommendations to the decision-maker, by conducting research or an investigation, preparing or presenting a report, analysis or opinion which requires the exercise of judgment on the part of the individual and the individual is attempting to influence the decision.

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

SUBJECT: SUSTAINABLE BUILDING POLICY
POLICY NO.: 900-14
EFFECTIVE DATE: May 20, 2003

BACKGROUND:

Existing buildings and the building development industry consume nearly half of the total energy used in the United States. The City of San Diego's commitment to become increasingly efficient with resources, including energy, water, and materials associated with construction projects, is demonstrated in Council Policy 900-14 "Green Building Policy" adopted in 1997, Council Policy 900-16 "Community Energy Partnership," adopted in 2000, and the updated Council Policy 900-14 "Sustainable Buildings Expedite Program" adopted in 2001.

On April 16, 2002, the Mayor and City Council adopted CMR 02-060 which requires City projects to achieve the U.S. Green Building Council's LEED silver standard for all new buildings and major renovations over 5,000 square feet. This places San Diego among the most progressive cities in the nation in terms of sustainable building policies.

As a participant in the International Council for Local Environmental Initiatives (ICLEI) Cities for Climate Protection Program, as a Charter member in the California Climate Action Registry and as an active member of the U.S. Green Building Council, the City of San Diego is committed to reducing greenhouse gas emissions by implementing more sustainable practices, including green building technologies.

PURPOSE:

The purpose of this policy is to reassert the City's commitment to green building practices in City facilities, and to provide leadership and guidance in promoting, facilitating, and instituting such practices in the community.

POLICY:

The following principles will be required for all newly constructed facilities and major building renovation projects for City facilities:

LEED (Leadership in Energy and Environmental Design):

The LEED (Leadership in Energy and Environmental Design) Green Building Rating System is a voluntary, consensus-based national standard for developing high-performance, sustainable buildings. Members of the U.S. Green Building Council representing all segments of the building industry developed LEED and continue to contribute to its evolution.

The City of San Diego is committed to achieving LEED "Silver" Level Certification for all new City facilities and major building renovation projects over 5,000 square feet.

SUSTAINABLE BUILDING MEASURES:

In addition to achieving LEED "Silver" Level Certification, Council Policy 900-14 encourages the following sustainable building measures for all newly constructed facilities and major renovation projects regardless of square footage:

1. Design and construct mechanical and electrical systems to achieve the maximum energy efficiency achievable with current technology. Consultants shall use computer modeling programs, (Energy Pro) to analyze the effects of various design options and select the set of options producing the most efficient integrated design. Energy efficiency measures shall be selected to achieve energy efficiencies at least 22.51% better than California's Title 24.2001 standards for both new construction and major renovation projects.
2. Incorporate self-generation using renewable technologies to reduce environmental impacts associated with fossil fuel energy use. Newly constructed City facilities shall generate a minimum of 10%, with a goal of 20% from renewable technologies (e.g., photovoltaic, wind and fuel cells).
3. Eliminate the use of CFC based refrigerants in newly constructed facilities and major building renovations and retrofits for all heating, ventilation, air conditioning and refrigerant-based building systems.
4. Incorporate additional commissioning and measurement and verification procedures as outlined by LEED 2.0 Rating System, Energy and Atmospheres, credit 3 and credit 5 for all projects over 20,000 sq. ft.
5. Reduce the quantity of indoor air contaminants that are odorous or potentially irritating to provide installer(s) and occupant(s) health and comfort. Low-emitting materials will include adhesives, paints, coatings carpet systems, composite wood and agri-fiber products.
6. In order to maximize energy efficiency measures within these requirements, projects will combine energy efficiency measures requiring longer payback periods, with measures requiring shorter payback periods to determine the overall project period.

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

7. Comply with the storm water development requirements in the Storm Water Management and Discharge Control Ordinance (Municipal Code § 43.03), and the City's grading and drainage regulations and implementing documents (MC § 142.01 and 142.02, respectively).

In addition to achieving the minimum sustainable building measure this Council Policy encourages the following measures be incorporated into newly constructed facilities and major renovation projects whenever possible:

1. Use high efficiency irrigation technology, drought tolerant native plants and recycled site water to reduce potable water for irrigation by 50%. Additionally, building water consumption should be reduced by 30%.
2. Limit disruption of natural water flows and minimize storm water runoff by minimizing building footprints and other impervious areas, increasing on-site infiltration, preserving and/or restoring natural drainage systems, and reducing contaminants introduced into San Diego's bays, beaches and the ocean.
3. Facilitate the reduction of waste generated by building occupants that is hauled to and disposed of in landfills. Provide an easily accessible area that serves the entire building and is dedicated to the separation, collection and storage of materials for recycling. Recycling should include paper, glass, plastic and metals at a minimum.
4. Incorporate building products that have recycled content reducing the impacts resulting from the extraction of new materials. Newly constructed City facilities shall have a minimum of 25% of building materials that contain in aggregate, a minimum weighted average of 20% post consumer recycled content materials.
5. Reduce the use and depletion of finite raw and long-cycle renewable materials by replacing them with rapidly renewable materials. Newly constructed City facilities should consider incorporating rapidly renewable building materials for 5% of the total building materials.
6. Establish minimum indoor air quality (IAQ) performance to prevent the development of indoor air quality problems in buildings, maintaining the health and well being of the occupants. Newly constructed City facilities will comply with IAQ by conforming to ASHRAE 62-1999.
7. City buildings will be designed to take the maximum advantage of passive and natural sources of heat, cooling, ventilation and light.

The Environmental Services Department, Energy Conservation and Management Division has been designated by this Council Policy as the clearing authority for issues relating to energy for the City of San Diego. The Energy Conservation and Management Division will enter into a Memorandum of Understanding with those City Departments who design, renovate and build new city owned facilities to insure all new City facilities reflect the intent of Council Policy 900-14.

PRIVATE-SECTOR/INCENTIVES:

It shall be the policy of the City Council to expedite the ministerial process for projects which meet the following criteria:

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1. Residential projects that provide 50% of their projected total energy use utilizing renewable energy resources, (e.g., photovoltaic, wind and fuel cells).
2. Commercial and industrial projects that provide 30% of their projected total energy use utilizing renewable energy resources, (e.g., photovoltaic, wind and fuel cells).
3. Residential and commercial and industrial projects that exceed the State of California Title 24 energy requirements by:
 - a. 15% better than California's Title 24.2001 for Residential Buildings.
 - b. 10% better than California's Title 24.2001 for Commercial and Industrial Buildings.

It shall be the policy of the City Council to expedite the discretionary process for projects which meet the following criteria:

1. Incorporate the U.S. Green Building Council, Leadership in Energy and Environmental Design (LEED) 2.0 Rating System "Silver" Level Certification for commercial development projects.
2. Incorporate self-generation through renewable technologies (e.g., photovoltaic, wind and fuel cells) to reduce environmental impacts associated with fossil fuel energy use for commercial and industrial projects generating a minimum of 30% or more of the designed energy consumption from renewable technologies such as photovoltaic, wind and fuel cells.
3. Residential discretionary projects of 4 units or more within urbanized communities as defined in the Progress Guide and General Plan that provide 50% of their projected total energy use utilizing renewable energy resources.

HEALTH AND RESOURCE CONSERVATION:

1. Projects will be designed to avoid inflicting permanent adverse impact on the natural state of the air, land and water, by using resources and methods that minimize pollution and waste, and do not cause permanent damage to the earth, including erosion.
2. Projects will include innovative strategies and technologies such as porous paving to conserve water, reduce effluent and run-off, thus recharging the water table.
3. When feasible, native plants will be used in landscaping to reduce pesticide, fertilizer, and water usage.
4. Buildings will be constructed and operated using materials, methods, mechanical and electrical systems that ensure a healthful indoor air quality, while avoiding contamination by carcinogens, volatile organic compounds, fungi, molds, bacteria, and other known toxins.

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5. Projects will be planned to minimize waste through the use of a variety of strategies such as: a) reuse of materials or the highest practical recycled content; b) raw materials derived from sustainable or renewable sources; c) materials and products ensuring long life/durability and recyclability; d) materials

requiring the minimum of energy and rare resources to produce and use; and e) materials requiring the least amount of energy to transport to the job site.

OUTREACH / EDUCATION:

1. An education and outreach effort will be implemented to make the community aware of the benefits of "Green Building" practices.
2. The City will sponsor a recognition program for innovative Green Building projects implemented in the public as well as private sector in an effort to encourage and recognize outstanding environmental protection and energy conservation projects.

IMPLEMENTATION:

The City will seek cooperation with other governmental agencies, public interest organizations, and the private sector to promote, facilitate, and implement Green Building and energy efficiency in the community.

LEGISLATION:

The City will support State and Federal legislation that promotes or allows sustainable development, conservation of natural resources, and energy efficiency technology.

REFERENCES:

Related existing Council Policies:
400-11, Water Conservation Techniques
400-12, Water Reclamation/Reuse
900-02, Energy Conservation and Management
900-06, Solid Waste Recycling

HISTORY:

Adopted by Resolution R-289457 11/18/1997
Amended by Resolution R-295074 06/19/2001
Amended by Resolution R-298000 05/20/2003

Exhibit A-3 – Scope of Services

ENGINEERING, TRAFFIC, STRUCTURAL, AND LANDSCAPING/VIA TASKS**Task A3.0 Additional Meetings, Coordination, and Presentations**

Based on guidance in Chapter 8 of the Project Development Procedures Manual (PDPM), the Consultant Team (DOKKEN, HELIX, LLG, TY-LIN, and ESTRADA) shall hold PDT meetings with the City of San Diego staff, Caltrans staff and other representatives from affected agencies.

Task A3.1 Additional Engineering & Oversight Meetings, Coordination, and Presentations

DOKKEN, LLG, TY-LIN, and ESTRADA shall meet with Community Groups, Public Interest Groups, City Staff, Federal-level Resource Agencies, or interested parties. The Consultant Team shall prepare hardcopy or electronic presentations, including display boards, informational flyers, and electronic slideshows. Sub-consultants may attend PDT meetings as appropriate.

Task A3.2 Additional Environmental Meetings and Coordination

HELIX's Project Director and Senior Project Manager will attend PDT meetings, as applicable, depending on the meeting purpose or content through completion of the Final EIR. These meetings will continue to be billed as time-and-materials. These hours are estimated on behalf of HELIX. HELIX specifies that any report reproduction; mileage; courier, fax, and FedEx charges will be invoiced as direct expenses. HELIX excludes reproduction services and courier services to deliver documents.

Task A3.2 Additional Engineering Services to incorporate New Topography for areas as a result of the Traffic Studies

City Traffic Staff has required additional traffic studies which have increased the overall project "footprint" area. Previous increases in project area were covered under previous Amendments 18, 19, and 33.

The Consultant Team shall update the project documents to the most recent increases to the overall project "footprint" area, including:

- 1) Signal and striping improvements at the intersection of Murray Canyon Drive and Frazee Road.
- 2) Striping improvements at the intersection of Frazee Road and Hazard Center Driveway.
- 3) Striping and widening improvements at the intersection of Friars Road and Avenida de las Tiendas Driveway (Cheesecake Factory).
- 4) New Soundwall area at the Hotel in Hazard Center.
- 5) New area under and near the Alternative 13 Bridge crossing the San Diego River.

A meeting was conducted with City Surveyors on 6/14/07 to determine areas to be surveyed. This task includes coordinating with City Surveyor, receiving and incorporating files into all Engineering documents, labeling features on project exhibits, and Draft Project Report.

Task A3.3 Additional Geotechnical Design Studies

City reviewers have requested additional geotechnical studies for the expanded project area. As agreed at the Meeting with City reviewers, all Geotechnical Studies will be prepared in accordance with Caltrans standards. City reviewers can determine necessary and specific information from these geotechnical studies.

The Consultant Team to perform additional geotechnical studies only in the most critical areas underneath and around the location of the Alternative 13 Bridge crossing the San Diego River and the Ulric Street Flyover Bridge.

The approved 2004 Geotechnical Design Report will be augmented with a Geotechnical Addendum. This Addendum will include borings and geotechnical analysis and foundation recommendations in the most

critical areas underneath and around the location of the Alternative 13 Bridge crossing the San Diego River and the Ulric Street Flyover Bridge. These critical areas were added as a result of the traffic studies and the PDT alternative analysis. Alternative 13 was ultimately selected as the preferred alternative.

Task A3.4 Water Quality Technical Report and Associated Documents

City reviewers have requested a new task for a Water Quality Technical Report that is prepared in accordance with the City's requirements for areas within the City right of way only.

The Consultant Team shall prepare a Water Quality Technical Report. This task includes updating the Storm Water Data Report (SWDR), Location Hydraulics Study, and the Scour Analysis as needed.

Task A3.5 Additional Traffic Studies

City reviewers have requested additional Traffic Studies, including additional traffic details, revised traffic tables, and numerous text and figure modifications be performed on all Traffic Studies. Previous work to perform additional traffic studies were covered under previous Amendments 10, 14, 37, 46, and 50.

The Consultant Team shall perform the following tasks:

Task A3.5.1 HCM Arterial Analysis - The Consultant Team to perform an HCM arterial analysis along Friars Road for the Existing, Year 2010, and 2030 timeframes. The analysis shall be limited to the critical PM peak hour only, as directed by the City. The arterial analysis shall be conducted for all the No-Build and Build scenarios. The results shall be presented with appropriate text and tables in the "Traffic Evaluation Report" and "Technical Addendum".

Task A3.5.2 Address City Comments - The Consultant Team to make revisions to the "Traffic Evaluation Report" and "Technical Addendum" based on the City's comment letter dated December 11, 2006. The comments to be addressed by LLG are editorial and analytical in nature. LLG to also prepare a response to comments memorandum.

Task A3.5.3 Traffic Studies/ EIR Review - The Consultant Team to review the Draft EIR against the revised Traffic Studies to ensure that all documents are consistent. LLG to present any discrepancies to the PDT.

Task A3.5.4 Baseline Comparisons - For CEQA purposes, the Consultant Team to compare each Build scenario with the baseline (No-Build) condition to determine whether any significant impacts are calculated based on the City's significance criteria. LLG to include a significance criteria section and calculate the "delta" between scenarios for intersection, street segment, CMP arterials, and freeway facilities under the Year 2010 and 2030 timeframes. The results shall be presented with appropriate text and tables in the "Traffic Evaluation Report" and "Technical Addendum".

Task A3.5.5 Murray Canyon Road and Frazee Road Intersection Analysis - The Consultant Team to review and optimize the intersection analysis of Murray Canyon Road and Frazee Road under the SB13 Alternative of the "Technical Addendum". Specifically, the Consultant Team to optimize the signal timing in order to improve the westbound approach LOS. If necessary, the Consultant Team to redirect shopping center traffic making u-turns at this intersection to account for drivers selecting an alternate route to avoid the new u-turn. The Consultant Team to update the volumes and analysis of any intersections affected with traffic re-routing, such as the Ralph's Driveway/Frazee Road and Friars Road/Frazee Road. The results shall be presented with appropriate text, tables, and figures in the "Technical Addendum".

Task A3.6 Additional Utility Studies to Coordinate with SDG&E

SDG&E reviewers have specified additional design requirements to encroach upon their utility easements, especially in the northwest quadrant of the interchange. The Consultant Team shall respond to SDG&E review comments and incorporating requested design features into the project documents, e.g.:

Maintenance Vehicle Access driveway from Ulric Street, graded pad around large regional transmission

tower, graded road to pad, clearance around and under structures, and coordination with SDG&E Staff.

Task A3.7 Modify Landscaping Concept Plan and Update Visual Impact Assessment (VIA)

Landscaping Concept Plan

City DSD – Landscaping reviewers have requested revisions to the Draft Landscaping Plan including requests for additional landscaping graphics. Other review comments include requests for greater detail in the form of text revisions to the Draft EIR/EA. In addition, City DSD – Landscaping and DSD – Long-Range Planning reviewers have requested additional plans, maps, and graphics indicating pedestrian and bicycle paths and points of crossing with additional studies required for proposed material types. The Consultant Team shall respond to City/Caltrans reviewer comments and update appropriate documents.

Visual Impact Assessment

Since the time that the Visual Impact Assessment was approved, City Traffic Staff has required additional traffic studies which have increased the overall project "footprint" area. The Visual Impact Assessment must be updated to include the new "footprint" areas. Also since the Draft Visual Impact Assessment was initially prepared, six sound walls have been determined to be feasible as well as conditionally reasonable. Caltrans has requested that the visual effect related to the proposed sound walls be incorporated into the Draft EIR/EA before the next review cycle. City reviewers have made requests for additional visual analysis of sound wall and retaining wall impacts within the Visual Impact Assessment including requests for photo simulations of the sound walls and retaining walls. Related review comments include requests for additional analysis to determine whether landscaped earthen berms are a feasible alternative to sound walls.

City reviewers have provided comments throughout the Draft EIR/EA as well as in the Draft Visual Impact Assessment requesting additional analysis with regards to City significance thresholds and mitigation requirements. In addition, the standards and methodology used throughout the Draft Visual Impact Assessment have been questioned and may require significant modification. City reviewers have previously requested additional new visual simulations as well as additional analysis of visual impacts during construction. Caltrans has requested updates to some of the visual simulations. The Consultant Team shall respond to City/Caltrans reviewer comments and update appropriate documents.

Resolutions to conflicting Caltrans and City review comments regarding the Landscape Concept Plan and Visual Impact Assessment will be coordinated.

Task A3.8 Update and Revise Draft and Final Project Report

The Consultant Team shall update and revise Draft and Final Project Report as a result of on-going PDT discussions, Caltrans and the City review comments, and coordination with Environmental Documentation. The Consultant Team to incorporate the entire work product from the abovementioned tasks into the Draft Project Report and Final Project Report. Draft Project Report and Final Project Reports are intended to be submitted simultaneously with the EIR Environmental Document. Two Draft submittals are anticipated and one Final submittal is anticipated.

Since the project footprint has been approximately tripled since the original contract, the project schedule has been extended accordingly. The Consultant will update the cost estimates with current construction unit costs to be included in the Draft Project Report. Due to new areas being added to the project, revised quantities will need to be calculated. Due to recently increased costs for construction materials, revised unit prices will need to be updated. These factors will increase the Engineer's Estimate for the project.

Based on project development, significant updates to the Traffic Studies were performed as required by the City's Traffic Group. The Consultant Team will perform significant efforts to incorporate the results and conclusions from the Traffic Studies into the Draft Project Report.

Task A3.8.1 Update Need and Purpose and Traffic Section

Need and Purposes, Project Justification, ADT Volumes, Weave Volumes, Level of Service, Segment Analysis, Merge-Diverge Analysis, TASAS, Accident Data.

Task A3.8.2 Alternatives Analysis**Feasible Alternative Section**

Plan View Layout Drawings
 Typical Cross Sections
 Profiles with Superelevation Diagrams
 Project Construction Staging Drawings
 Project Phasing Drawings
 Sound Barrier Locations
 Engineer's Cost Estimate
 Flexible Pavement Structural Sections

Infeasible Alternatives Section**Task A3.8.3 Considerations Requiring Discussion**

Hazardous Waste
 Value Analysis
 Resource Conservation
 Right of Way Issues
 Environmental Issues

Task A3.8.4 Attachments

Structures Advance Planning Studies
 Utility Information Sheet
 Right of Way Data Sheet
 Landscape Concept Plan
 Water Resource Studies
 Storm Water Data Report (SWDR)
 Initial Site Assessment (ISA)
 Transportation Management Plan
 Cooperative Agreements
 Environmental Documentation

ENVIRONMENTAL DOCUMENTATION AND ENVIRONMENTAL OVERSIGHT ITEMS**Task A3.9 Environmental Management**

The Environmental Team (HELIX) will provide technical study and CEQA process management during the preparation of the screencheck Draft EIRs, public circulation Draft EIR, screencheck Final EIRs, and Final EIR. This task includes Dokken Engineering consultation, coordination with City staff regarding EIR content, coordination of HELIX staff (environmental, administrative and graphics/GIS staff), and coordination with HELIX subconsultants as necessary. A budget has been identified for this task in the Cost Estimate that would be drawn upon as necessary. This budget is based on 12 hours per month for the Senior Project Manager and 6 hours per month for the Project Director for an assumed EIR preparation period of 18 months.

Task A3.10 Cultural Technical Studies

Based on City comments (including conversation between Myra Herrmann of the City and Mary Robbins-Wade of Affinis on August 9, 2007) and requirements for the Archaeological Resources Inventory (ARI), the records search will be updated; and a City building, structure and object form (BSO) will be prepared for the 1946 bridge structure. (The City's evaluation requirements focus on 45 years of age at the time of evaluation, and are not projected through opening day.) In addition, clarification of monitoring during column drilling within alluvium as part of bridge construction and incorporation of new City mitigation

measures for cultural resources are included. Up to two rounds of City review of the revised ARI are assumed. This scope and costs assume that no comments will be received during public review that requires changes to the circulated cultural resources technical reports.

Task A3.10.1 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services

Dokken Engineering to provide quality control efforts to review subconsultant documents; provide, coordinate, and resolve review comments, and to provide subconsultant oversight and coordination with City and Caltrans. Task includes reproduction services, travel, mileage, postage, and courier service.

Task A3.11 Environmental Technical Studies

Per a HELIX conversation with Kevin Hovey on August 16, 2007, it is likely that additional work effort will be necessary for anticipated revisions and addenda to technical reports requiring Caltrans review. Because (with the exception of the growth task specified below) the specifics of the revisions are unknown at this time, additions have been made to the former Task 11.0 technical studies to cover potential future addenda (i.e., relatively minor updates, clarifications, or restricted new review; resulting in no new significant impacts).

Task A3.11.1 – Community Impact Assessment. The Community Impact Assessment will be revised based on new Caltrans guidance for how transportation projects can “influence growth.” Following review of the potential for growth effect, the potential for alternative growth influence, and the effect on resources of concern, will be amended if appropriate. The technical work necessary for this analysis and the associated technical report revision are included within this scope and costs, as are potential addenda noted above. A Final Relocation Impact Memorandum will be prepared for submittal with final technical studies to Caltrans. The original contract has a sufficient amount left in the original Task 11.0 budget to cover the cost of the preparation of the Final Relocation impact Memorandum.

Task A3.11.2 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services

Dokken Engineering to provide quality control efforts to review subconsultant documents; provide, coordinate, and resolve review comments, and to provide subconsultant oversight and coordination with City and Caltrans. Task includes reproduction services, travel, mileage, postage, and courier service.

Task A3.11.3 - Noise Analysis. Based on team coordination of August 3, 2007, it is understood that City-requested changes to the project traffic technical report will not change project average daily traffic (ADT) counts on project-evaluated roads. As a result, no changes based on ADT modifications to the Draft Acoustical Assessment Report are assumed. This scope and costs also assume that no comments will be received during public review requiring changes to the circulated Acoustical Assessment Report.

The Acoustical Assessment will be revised to incorporate graphics and tabular revisions requested by Caltrans. Per Caltrans request, two additional meetings are included in order to address any outstanding issues at this point (Kevin Hovey, August 14, 2007). The technical work necessary to respond to unspecified but anticipated revisions to the technical report based on Caltrans issues as well as requested attendance at two meetings also is included.

The City request for clarification regarding City nighttime and overall municipal code requirements effects related to construction period noise, as well as graphics clarifications will be addressed. Coordination with City Environmental Analysis Section (EAS) and Capital Improvement Projects (CIP) staff will occur regarding ultimate classification of short-term noise effects and City standards. Text will be revised to clarify/incorporate this information. These clarifications will be addressed as City-required errata to the Acoustical Assessment and will be bound into the front of the document.

Task A3.11.4 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services

Dokken Engineering to provide quality control efforts to review subconsultant documents; provide, coordinate, and resolve review comments, and to provide subconsultant oversight and coordination with

City and Caltrans. Task includes reproduction services, travel, mileage, postage, and courier service.

Task A3.11.5 Air Quality Technical Report. Based on team coordination of August 3, 2007, and as noted above, it is understood that any City-requested changes to the project traffic technical report will not change project ADT counts on project-evaluated roads or signalization/intersections addressed in the Caltrans-approved Draft Air Quality Technical Report.

No requested changes to the text of the Draft Air Quality Technical Report were received from the City. Per conversation with Elizabeth Shearer-Nguyen, a City request to include information related to effects of criteria pollutants/sensitive receptors within the EIR was noted and is addressed under Task 13.0. The technical work necessary to respond to this request is addressed under an Augment to this technical report cost. No changes to the report are assumed, and it is also expressly assumed that no comments will be received during public review requiring changes to the circulated Air Quality Technical Report.

Anticipated technical work necessary to respond to currently unspecified but potentially required Caltrans task items resulting in addenda to the technical report is addressed included.

Task A3.11.6 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services

Dokken Engineering to provide quality control efforts to review subconsultant documents; provide, coordinate, and resolve review comments, and to provide subconsultant oversight and coordination with City and Caltrans. Task includes reproduction services, travel, mileage, postage, and courier service.

Task A3. 11.7 RTP / RTIP / Funding Coordination and Resolution

Coordinate with Caltrans and SANDAG regarding RTP/RTIP Listing, Capacity Increasing status, and determination of "full funding." Coordinate with City, DSD, and Developers to resolve funding strategies and project phasing concepts to accommodate available funding.

Task A3.12 - Biological Technical Studies

Task A3.12.1 Abbreviated Biological Technical Report. HELIX will prepare an abbreviated City Biological Technical Report (BTR) discussion that incorporates City biological resources issues and requirements. City issue items such as conformance to/deviation from the ESL regulations, MSCP agency guidelines conformance, City wetlands review, etc. will be specifically addressed and will be incorporated into the City Appendix to the Caltrans-approved Natural Environment Study (NES). The abbreviated BTR discussion will include updated information based on recent biological surveys (coastal California gnatcatcher, least Bell's vireo, southwestern willow flycatcher, rare plants), and will incorporate by reference all information in the preceding NES. The chapter will contain introductory language that the information is provided for City CEQA needs. (This format approved by Elizabeth Shearer-Nguyen on August 10 and Kevin Hovey on August 14, 2007.) Two rounds of City review are assumed. A total of 40 hours for responses to substantive comments following public review are assumed. It is also expressly assumed that no comments will be received during public review requiring changes to the circulated BTR/NES document.

Task A3.12.2 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services

Dokken Engineering to provide quality control efforts to review subconsultant documents; provide, coordinate, and resolve review comments, and to provide subconsultant oversight and coordination with City and Caltrans. Task includes reproduction services, travel, mileage, postage, and courier service.

Task A3.12.3 Biological Assessment. No revisions to the Biological Assessment to reflect recent coastal California gnatcatcher surveys are assumed, as the informal Section 7 consultation with the United States Fish and Wildlife Service (Service) has been concluded per Kevin Hovey's email to Jeannette DeAngelis of August 8, 2007. Coordination with Kevin Hovey will be ongoing, as he has requested to be kept informed of all new surveys and their results. Because the BA functioned as a support document for agency coordination and permitting with the Service, it will not be publicly circulated.

Task A3.12.4 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services

Dokken Engineering to provide quality control efforts to review subconsultant documents; provide, coordinate, and resolve review comments, and to provide subconsultant oversight and coordination with City and Caltrans. Task includes reproduction services, travel, mileage, postage, and courier service.

Task A3.12.5 Off-site Mitigation Coordination. HELIX will coordinate the identification, City acceptance, and acquisition of one or more off-site wetland mitigation parcels. This task includes fieldwork to identify the feasibility of appropriate mitigation sites.

Task A3.12.6 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services

Dokken Engineering to provide quality control efforts to review subconsultant documents; provide, coordinate, and resolve review comments, and to provide subconsultant oversight and coordination with City and Caltrans. Task includes reproduction services, travel, mileage, postage, and courier service.

Task A3.12.7 Off-site Wetland Restoration Plan. HELIX will prepare an off-site wetland restoration plan once the mitigation site has been identified. This task does not include construction documents (plans and specifications) that would be required prior to approval of the plan. HELIX will submit the Plan to the City and Caltrans, and will make two sets of revisions based on City/Caltrans comments. This document will be circulated as part of the Draft EIR.

Task A3.12.8 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services

Dokken Engineering to provide quality control efforts to review subconsultant documents; provide, coordinate, and resolve review comments, and to provide subconsultant oversight and coordination with City and Caltrans. Task includes reproduction services, travel, mileage, postage, and courier service.

Task A3.12.9 Construction Documents. A HELIX licensed landscape architect will prepare construction documents (CDs), including construction plans and specifications for the riparian habitat creation and enhancement areas per the approved wetland restoration plan and the mitigation agreements.

Construction documents will include the following:

- Title Sheet
- Site Preparation Plan
- Irrigation Plans
- Planting Plans
- Installation Details and Specifications

Task A3.12.10 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services

Dokken Engineering to provide quality control efforts to review subconsultant documents; provide, coordinate, and resolve review comments, and to provide subconsultant oversight and coordination with City and Caltrans. Task includes reproduction services, travel, mileage, postage, and courier service.

Task A3.12.11 Meetings and Agency Liaison. HELIX assumes a maximum of 80 hours for biological resources specialists in meetings with the City, Caltrans, and other applicable agencies, and related advisory services.

Exclusion: HELIX excludes costs associated with additional biological meeting time beyond that specified. Other focused species surveys, additional permit preparation and processing (e.g., a 4[d] or 10[a] permit), installation and five-year maintenance and management of wetland restoration, and/or technical studies and other reports ("additional work") are not included within the scope of services required of HELIX.

Task A3.12.12 Preparation and Submittal of Permit Applications. HELIX will prepare and submit the following permit applications and agreement requests for the Proposed Project.

- Report of Waste Discharge (ROWD). HELIX will prepare and submit an ROWD application to the State Water Resources Control Board (SWRCB), which also regulates discharges to Waters of the State under authority of the Porter-Cologne Water Quality Act and, in certain cases, requires an Application/Report of Waste Discharge.
- Section 1602 Streambed Alteration Agreement. HELIX will prepare and submit a Division 2, Chapter 6, Section 1602 Streambed Alteration Agreement request to California Department of Fish & Game (CDFG) for Project effects on areas under CDFG jurisdiction.
- 404 permit from the U.S. Army Corps of Engineers (ACOE).

Exclusion: HELIX excludes the filing fees for the ROWD and the Streambed Alteration Agreement. Dokken Engineering to cover filing fees for HELIX.

Task A3.12.13 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services, and Fees

Dokken Engineering to provide quality control efforts to review subconsultant documents; provide, coordinate, and resolve review comments, and to provide subconsultant oversight and coordination with City and Caltrans. Task includes reproduction services, travel, mileage, postage, and courier service. Dokken Engineering will provide filing fees.

Task A3.12.14 Support for Permit Processing. The effort necessary to "process" the Project's permits and reports can vary depending upon staff assignments and Project priorities at the regulatory agencies, the presence of sensitive species, and mitigation negotiations, among other factors. For costing purposes, HELIX has assumed 40 hours of senior regulatory specialist time for this task.

Exclusion: HELIX excludes sensitive species preconstruction surveys, construction monitoring, or fulfillment of any conditions or mitigation implementation required by the USFWS, CDFG, Corps, RWQCB, or other resource agency.

Task A3.12.15 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services

Dokken Engineering to provide quality control efforts to review subconsultant documents; provide, coordinate, and resolve review comments, and to provide subconsultant oversight and coordination with City and Caltrans. Task includes reproduction services, travel, mileage, postage, and courier service.

Task A3.12.16 Jurisdictional Delineation Report. In order to support the jurisdictional permitting effort, HELIX will prepare a jurisdictional delineation report that will present the results of the delineation and support the Section 1602 Streambed Alteration Agreement and ROWD applications. The report will be based on HELIX's best effort to quantify the amount of Waters of the U.S. and Waters of the State on the Project site using the current regulations, written policies, and guidance from the regulatory agencies. Only the U.S. Army Corps of Engineers (Corps), CDFG, RWQCB and the City, however, can make a final determination of jurisdictional boundaries. This document will not be publicly circulated.

Task A3.12.17 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services

Dokken Engineering to provide quality control efforts to review subconsultant documents; provide, coordinate, and resolve review comments, and to provide subconsultant oversight and coordination with City and Caltrans. Task includes reproduction services, travel, mileage, postage, and courier service.

Task A3.13 ENVIRONMENTAL IMPACT REPORT

Task A3.13.1 First Screencheck Draft EIR. The previous environmental document, the Revised First Screencheck Draft EIR/EA, was formatted based on Caltrans' EIR/EA Annotated Outline. The Caltrans format was specific as to content placement, and the primary analysis (Chapter 2.0, Affected Environment; Environmental Consequences; and Avoidance, Minimization and/or Mitigation Measures) addressed NEPA requirements. A separate chapter (Chapter 3.0, California Environmental Quality Act Evaluation) addressed CEQA requirements.

HELIX will now prepare a First Screencheck Draft EIR in the City format (City of San Diego Environmental Impact Report Guidelines [2005]). The preparation of this EIR will involve reorganization of the environmental document, deletion of NEPA analyses and impact significance conclusions, and re-writing in order to create a cohesive CEQA-only document.

The following chapters will be included in the EIR: Summary; Introduction; Environmental Setting; Project Description; History of Project Changes; Environmental Analysis; Significant Environmental Effects Which Cannot be Avoided if The Proposed Project is Implemented; Significant Irreversible Environmental Changes; Growth Inducement; Cumulative Impacts, Effects Found Not to be Significant; Alternatives, Mitigation Monitoring and Reporting Program; References; Individuals and Agencies Consulted; and Certification Page.

The City's Significance Determination Thresholds used for the preparation of the EIR/EA were updated in January 2007, subsequent to preparation/submittal of EIR/EA. The new thresholds will be reviewed to ensure that significance criteria used in the EIR are consistent with these current thresholds.

Per City request, additional discussions will be added to the environmental document for issues not previously required or requested. These issue areas include energy, mineral resources, clarification of pump station/utilities information based on data provided by DOKKEN ENGINEERING, and fire and police services, and largely will be addressed as effects found to be less than significant. Additionally, a comparison table will be added to the Alternatives Considered but Rejected section.

The Visual Effects section in the EIR will include an expanded discussion of the retaining wall and the positive effect the wall would have in opening up the view panorama. Discussion as to the CEQA effect/significance of temporary construction effects will be clarified with staff and in the EIR text.

Text within the air quality discussion will be amended to include a brief discussion on the effect of criteria pollutants on sensitive receptors and to expand the discussion of sensitive receptors.

The biological resources EIR text will be revised to incorporate new information resulting from updated biological surveys and resultant changes to the BTR/NES as described above. Changes to EIR text also will be necessary to reflect City-requested changes to a number of technical reports. These include amended traffic, geotechnical, ARI and visual resources technical reports, as well as a wholly new water quality report.

The cumulative projects list and discussion in the Revised First Screencheck DEIR/EA were based on information provided by City staff in 2005 during the initial stages of environmental document preparation. Since that time, some of the listed projects have been constructed, while other new projects have been proposed or are being processed. Per team direction on August 1, 2007, "existing conditions" were set as of circulation of the Project Notice of Preparation (NOP) of an EIR/EA, but (per confirmation from Elizabeth Shearer-Nguyen on August 10, 2007) the cumulative projects discussion will be updated based on the latest information on planned projects supplied by City staff and the cumulative projects figure will be updated. Changes to use identification (i.e., store names, development names, etc.) will be tracked through existing setting and land use discussions as well.

Because of the wholesale nature of the changes requested, and per team discussion on August 1, 2007, the new EIR will be a clean document and will not be prepared in strike-out/underline format.

HELIX also will implement other City-requested changes to the September EIR/EA into the new document, incorporating them into the First Screencheck Draft EIR. In addition, written responses will be prepared to all comments presented in City Cycle Issues Draft pages.

NOTE: Per team discussion on July 16 and City request, costs identified for the new EIR relate to creation of the new CEQA document and new scope items—and do not include costs for technical revisions covered within August 10 of August 2005, and addressed as part of Master Amendment 2.

HELIX will deliver to Dokken Engineering one camera-ready copy and one CD of the First Screencheck Draft EIR plus HELIX-revised technical appendices to the Draft EIR for reproduction and distribution to City Development Services Department (DSD) and Engineering & Capital Projects Department.

Exclusions:

- *For graphics and word processing cost estimates for the camera-ready copy, it is assumed that the EIR documents will contain a maximum of 8 8½ x 11-inch colored figures, 20 11 x 17-inch black-and-white figures, and 15 11 x 17-inch colored figures. It also is assumed that the EIR will contain a number of pages similar to that of the September 2006 Revised First Screencheck Draft EIR/EA. As stipulated above under each task, as appropriate, HELIX will deliver one camera-ready copy and one CD in pdf format of the EIR screenchecks, draft, and final document to Dokken Engineering. Technical biological reports (BTR/NES, JD, and Off-site Wetland Restoration Plan), as well as ARI, noise and air quality reports assume HELIX transmittal of one camera-ready and one CD of the document in pdf format to Dokken Engineering.*
- *All technical report copies not mentioned above will be provided to the City by Dokken Engineering.*
- *HELIX anticipates City DSD and Engineering & Capital Projects Department (and City legal counsel, as applicable) will review each screencheck draft concurrently. No comments on the City EIR are expected from Caltrans staff.*
- *HELIX anticipates that there will be no further changes to the Project Description with resultant changes to technical analyses, either in individual technical reports or as summarized in the EIR.*
- *HELIX specifies that Dokken Engineering will provide all new/revised technical reports, figures, and other information necessary to complete the EIR. Dokken Engineering is responsible for the adequacy of all technical reports prepared by others that are used to support the EIR. These include, but are not limited to, the revised geotechnical report, traffic report, utilities information, and water quality report requested by the City.*
- *HELIX anticipates that only Alternative 13 and the No Build Alternative will be analyzed in detail in the EIR. No other alternatives analyses will be added to the EIR.*
- *HELIX anticipates that the Final EIR will be completed within a time frame not to exceed 18 months.*
- *HELIX agreed with Kevin Hovey (August 14, 2007), technical reports may require review for updating after three years. If the project schedule extends beyond three years of technical report approval, some updating may be required. This scope and costs assumes that the project will either be approved prior to initiation of Caltrans-requested technical report updates, or that such updates can be addressed through provision of errata/addenda explaining that conditions have not substantially changed/wholesale updates are not necessary. Any additional revisions to the reports as a whole would require an augment exceeding the current request.*

Task A3.13.2 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services

Dokken Engineering to provide quality control efforts to review subconsultant documents; provide, coordinate, and resolve review comments, and to provide subconsultant oversight and coordination with City and Caltrans. Task includes reproduction services, travel, mileage, postage, and courier service.

Task A3.13.3 Second Screencheck Draft EIR. Since this will be the first review round for this new EIR,

comments may be pervasive. HELIX will prepare a Second Screencheck Draft EIR (in strike-out/underline format) based on City comments on the First Screencheck Draft EIR. One camera-ready copy and one CD of the Second Screencheck Draft EIR and any technical study additionally revised as part of this scope will be delivered to Dokken Engineering for reproduction and distribution to City DSD and Engineering & Capital Projects Department.

Dokken Engineering/City review of the Second Screencheck Draft EIR is expected to involve a final inspection, with more focused edits required prior to printing of the public review documents. As a result, individual change pages/sections will be submitted to Dokken Engineering/City for sign off.

Task A3.13.4 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services

Dokken Engineering to provide quality control efforts to review subconsultant documents; provide, coordinate, and resolve review comments, and to provide subconsultant oversight and coordination with City and Caltrans. Task includes reproduction services, travel, mileage, postage, and courier service.

Task A3.13.5 Draft EIR for Circulation. Upon City sign off, HELIX will finalize the Draft EIR for public circulation. All strike-out/underline formatting will be removed from the text, and a final QA/QC will be conducted. HELIX will deliver to Dokken Engineering one camera-ready copy and one CD of the public review Draft EIR plus HELIX technical appendices to the Draft EIR for delivery to the City and to Caltrans for files/use as support documentation to the NEPA Categorical Exclusion.

Task A3.13.6 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services

Dokken Engineering to provide quality control efforts to review subconsultant documents; provide, coordinate, and resolve review comments, and to provide subconsultant oversight and coordination with City and Caltrans. Task includes reproduction services, travel, mileage, postage, and courier service.

Task A3.13.7 Public Hearing. HELIX staff will attend a maximum of two public hearings on the Draft EIR (to occur during public circulation or upon completion of the Final EIR). HELIX's Project Director, Senior Project Manager, and biologist, as applicable, will attend the meetings. HELIX will provide up to two large-scale biological resources displays if requested by Dokken Engineering. It is assumed the City will prepare and distribute public notification of these hearings, arrange for meeting venues, and conduct the meetings.

HELIX also will prepare draft CEQA Findings (per State CEQA Guidelines Section 15091) prior to circulation of the EIR. One round of Findings review by the City and minor revisions are assumed.

Task A3.13.8 First Screencheck Final EIR. Based on prior experience with City EIRs, HELIX will provide substantial support to City staff in completion of the Final EIR. Although the number of letters that may be received by the City is currently unknown, HELIX will prepare responses to up to *100 individual comments*. As appropriate, HELIX will modify the EIR to correspond to responses to public comments and will prepare a First Screencheck Final EIR. As just noted, this document will consist of strike-out/underline revisions to the circulated Draft EIR, as well as numbered comments with corresponding responses. These comments and responses will consist of comments annotated with suggested comment breaks and attached responses which will precede the Draft EIR text. A camera-ready copy and CD will be provided to Dokken Engineering for reproduction and distribution to City DSD and Engineering & Capital Projects Department.

Task A3.13.9 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services

Dokken Engineering to provide quality control efforts to review subconsultant documents; provide, coordinate, and resolve review comments, and to provide subconsultant oversight and coordination with City and Caltrans. Task includes reproduction services, travel, mileage, postage, and courier service.

Task A3.13.10 Second Screencheck Final EIR. Based on comments received from the City, HELIX will prepare a Second Screencheck Final EIR. The responses to comments will be revised per City request,

and the second submittal will show the letters and responses in side-by-side landscape format. Only those sections of the Second Screencheck Final EIR that were revised following First Screencheck Final EIR review will be provided to Dokken Engineering/City. A single camera-ready copy and CD of the revised text provided to Dokken Engineering for reproduction and distribution to City departments.

Task A3.13.11 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services

Dokken Engineering to provide quality control efforts to review subconsultant documents; provide, coordinate, and resolve review comments, and to provide subconsultant oversight and coordination with City and Caltrans. Task includes reproduction services, travel, mileage, postage, and courier service.

Task A3.13.12 Final EIR. Dokken Engineering/City review of the Second Screencheck Final EIR is expected to involve a final inspection, with only minor edits required.

HELIX will prepare the Final EIR. HELIX will provide Dokken Engineering one camera-ready copy and one CD of the Final EIR and HELIX technical appendices to the Final EIR for reproduction and distribution to the City. It is anticipated that the City will transmit a copy of the Final EIR and technical appendices to Caltrans for their files.

Task A3.13.13 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services

Dokken Engineering to provide quality control efforts to review subconsultant documents; provide, coordinate, and resolve review comments, and to provide subconsultant oversight and coordination with City and Caltrans. Task includes reproduction services, travel, mileage, postage, and courier service.

Task A3.13.14 Findings, Statement of Overriding Considerations, and Notice of Determination. HELIX to perform the following:

- Preparation of draft Findings was addressed as part of the Draft EIR above. If necessary (due to changes following Draft EIR circulation), these Findings will be modified for submittal with the Final EIR.
- HELIX will provide a Statement of Overriding Considerations (SOC; per State CEQA Guidelines Section 15093, if applicable). The Final SOC will be attached to the Final EIR. One round of review of the SOC by the City and minor revisions are assumed.
- HELIX will provide a Notice of Determination (per State CEQA Guidelines Section 15094). One round of review of the Notice of Determination by the City and minor revisions are assumed.

Task A3.13.15 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services

Dokken Engineering to provide quality control efforts to review subconsultant documents; provide, coordinate, and resolve review comments, and to provide subconsultant oversight and coordination with City and Caltrans. Task includes reproduction services, travel, mileage, postage, and courier service.

Exhibit B-3: Compensation Schedule

TASK	SUBTASK NUMBER & DESCRIPTION	SUBTASK SUBTOTALS	LUMP SUM COMPEN- SATION
Task A3.1	Additional Meetings and Presentations		\$44,885
Task A3.2	Additional Engineering Services to incorporate New Topography for areas as a result of the Traffic Studies		\$19,000
Task A3.3	Additional Geotechnical Design Studies		\$33,000
Task A3.4	Water Quality Technical Report and Associated Documents		\$22,200
Task A3.5	Additional Traffic Studies		\$35,000
	A3.5.1 HCM Arterial Analysis	\$8,250	
	A3.5.2 Address City Comments	\$7,820	
	A3.5.3 Traffic Studies/ EIR Review	\$2,000	
	A3.5.4 Baseline Comparisons	\$8,000	
	A3.5.5 Murray Canyon Road and Frazee Road Intersection Analysis	\$8,930	
Task A3.6	Additional Utility Studies to Coordinate with SDG&E		\$50,000
Task A3.7	Modify Landscaping Plan Studies and Update Visual Impact Assessment (VIA)		\$21,400
Task A3.8	Update and Revise Draft and Final Project Report		\$121,300
	A3.8.1 Update Need and Purpose and Traffic Section Need and Purpose, Project Justification, ADT Volumes, Weave Volumes, Level of Service, Segment Analysis, Merge-Diverge Analysis, TASAS, Accident Data.	\$5,700	
	A3.8.2 Alternatives Analysis Feasible Alternative Section, Plan View Layout Drawings, Typical Cross Sections, Profiles with Superelevation Diagrams, Project Construction Staging Drawings, Project Phasing Drawings, Sound Barrier Locations, Engineer's Cost Estimate, Flexible Pavement Structural Sections, Infeasible Alternatives Section	\$36,200	
	A3.8.3 Considerations Requiring Discussion Hazardous Waste, Value Analysis, Resource Conservation, Right of Way Issues, Environmental Issues	\$8,100	

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Exhibit B-3: Compensation Schedule

TASK	SUBTASK NUMBER & DESCRIPTION	SUBTASK SUBTOTALS	LUMP SUM COMPEN- SATION
	A3.8.4 Attachments Structures Advance Planning Studies, Utility Information Sheet, Right of Way Data Sheet, Landscape Concept Plan, Water Resource Studies, Storm Water Data Report (SWDR), Initial Site Assessment (ISA), Transportation Management Plan, Cooperative Agreements, Environmental Documentation	\$71,300	
Task A3.9	Environmental Management		\$35,752
Task A3.10	Cultural Technical Studies		\$7,746
Task A3.11	Environmental Technical Studies		\$36,335
	A3.11.1 Community Impact Studies	\$6,000	
	A3.11.2 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services	\$898	
	A3.11.3 Noise Analysis	\$10,511	
	A3.11.4 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services	\$898	
	A3.11.5 Air Quality Study	\$4,130	
	A3.11.6 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services	\$898	
	A3.11.7 RTP / RTIP / Funding Coordination and Resolution Coordinate with Caltrans and SANDAG regarding RTP/RTIP Listing, Capacity Increasing status, and determination of "full funding." Coordinate with City, DSD, and Developers to resolve funding strategies and project phasing concepts to accommodate available funding.	\$13,000	
Task A3.12	Biological Technical Studies		\$122,900
	A3.12.1 Abbreviated Biological Technical Report	\$24,059	
	A3.12.2 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services	\$2,800	
	A3.12.3 Biological Assessment	\$1,630	

000114

Exhibit B-3: Compensation Schedule

TASK	SUBTASK NUMBER & DESCRIPTION	SUBTASK SUBTOTALS	LUMP SUM COMPEN- SATION
	A3.12.4 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services	\$1,443	
	A3.12.5 Off-site Mitigation Coordination	\$6,238	
	A3.12.6 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services	\$1,499	
	A3.12.7 Off-site Wetland Restoration Plan	\$16,959	
	A3.12.8 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services	\$1,588	
	A3.12.9 Construction Documents	\$15,063	
	A3.12.10 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services	\$1,700	
	A3.12.11 Meetings and Agency Liaison	\$9,564	
	A3.12.12 Preparation and Submittal of Permit Applications	\$16,005	
	A3.12.13 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services, and Fees	\$10,738	
	A3.12.14 Support for Permit Processing	\$5,151	
	A3.12.15 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services	\$998	
	A3.12.16 Jurisdictional Delineation Report	\$6,468	
	A3.12.17 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services	\$998	
Task A3.13	Environmental Impact Report		\$211,481
	A3.13.1 First Screencheck Draft	\$44,335	
	A3.13.2 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services	\$8,850	
	A3.13.3 Second Screencheck Draft	\$27,253	
	A3.13.4 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services	\$6,986	
	A3.13.5 Draft for Circulation	\$17,231	

Exhibit B-3: Compensation Schedule

TASK	SUBTASK NUMBER & DESCRIPTION	SUBTASK SUBTOTALS	LUMP SUM COMPEN- SATION
	A3.13.6 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services	\$6,986	
	A3.13.7 Public Hearing	\$6,465	
	A3.13.8 First Screencheck Final	\$31,540	
	A3.13.9 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services	\$6,986	
	A3.13.10 Second Screencheck Final	\$12,888	
	A3.13.11 Quality Control, Consultant Oversight, Review & Comment, and Agency Coordination	\$5,088	
	A3.13.12 Final EIR Environmental Document	\$17,809	
	A3.13.13 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services	\$5,778	
	A3.13.14 Findings, Statement of Overriding Considerations, NOC	\$8,696	
	A3.13.15 Quality Control, Consultant Oversight, Review & Comment, Agency Coordination, Reproduction Services	\$4,588	
Master Amendment #3 Grand Total			\$761,000

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Dokken Engineering	
FUNCTION	RATE
Project Manager	\$199
Project Engineer	\$155
Lead Drainage Designer	\$131
Lead Roadway Designer	\$95
Environmental Specialist	\$142
Roadway Designer	\$88
Engineering Tech.	\$81
Structures Engineer	\$140
Geotechnical Engineer	\$140
Geologist	\$120

Helix Environmental	
FUNCTION	RATE
Project Director	\$180.13
Senior Project Manager	\$101.85
CEQA/Tech Studies/Sr LA/Noise	\$123.55
CEQA/Tech Studies	\$98.82
CEQA/Tech Studies	\$64.85
Biological Resources	\$119.55
Biological Resources	\$84.21
Biological Resources	\$74.13
Biological Resources/LA	\$67.21
Geographic Info. Systems	\$90.06
Geographic Info. Systems	\$60.52
Word Processing/Clerical	\$57.64
Document Production	\$87.15
Technical Editing	\$82.89

Exhibit C-3: Fee Schedule

Linscott, Law & Greenspan	
FUNCTION	RATE
Principal	\$225
Sr. Traffic Engr.	\$163
Planner/CADD	\$93

TY Lin International	
FUNCTION	RATE
Project Manager	\$144
Project Engineer	\$163
Design Engineer	\$69

Estrada Land Planning	
FUNCTION	RATE
Principal	\$200
Landscape Architect	\$115
Landscape Designer	\$90

Exhibit D-3: Time Schedule

	Task	Task Duration Completion (from Contract NTP June, 2003)
Task 1.0 Project Management	72 Months	72 Months
Task 2.0 PES/Field Review	6 Months	6 Months
Task 3.0 Preliminary Engineering Studies	36 Months	60 Months
Task 4.0 Geotechnical Engineering Studies	18 Months	60 Months
Task 5.0 Traffic Studies	72 Months	72 Months
Task 6.0 Geometric Alternatives	24 Months	36 Months
Task 7.0 Value Analysis	1 Month	8 Months
Task 8.0 Structures APS	24 Months	72 Months
Task 9.0 Draft Project Report	60 Months	72 Months
Task 10.0 Cultural Technical Studies	60 Months	48 Months
Task 11.0 Environmental Technical Studies	60 Months	72 Months
Task 12.0 Biological Technical Studies	60 Months	72 Months
Task 13.0 EIR/CE	72 Months	72 Months
Task 14.0 Project Report	72 Months	72 Months

The term of this contract is 72 months from date of execution.